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भाग II—खण्ड 3 (ii)
PART II—Section 3 (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालयों को छोड़कर) द्वारा जारी किए गए
सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

मंत्रिमंडल सचिवालय

नई दिल्ली, 8 जनवरी, 2004

का. आ. 87.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 210 पीसीआर 2003 दिनांक 13 अक्टूबर, 2003 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से भारतीय स्टेट बैंक के कुछ अज्ञात अधिकारियों एवं किन्हीं अन्य लोक सेवकों अथवा व्यक्तियों के विरुद्ध भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी सम्बंधित धारा 419, 420, 380, 467, 468, 471 तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13(2) सम्बंधित धारा 13(1)(डी) के अधीन दंडनीय अपराधों और उप अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रत्येक, दुष्प्रेरणों और घडमंत्र तथा उसी संव्यवहार के अनुक्रम में किए

गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्बंधित कर्नाटक राज्य में करती है।

[सं. 228/96/2003-डी. एस. पी. ई.]

तुषा ठाकुर, जवर सचिव

CABINET SECRETARIAT

New Delhi, the 8th January, 2004

S.O. 87.—In exercise of the powers conferred by sub-section (1) of section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Karnataka, vide Notification No. HD 210 PCR 2003 dated 13th October, 2003, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of

the State of Karnataka for investigation of offences against certain unknown officials of State Bank of India and any other public servants or persons under Section 120-B read with 419, 420, 380, 467, 468, 471 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) and attempts, abetments and conspiracy in relation to or in connection with one or more of the offence mentioned above and any other offence and offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/96/2003-DSPE]
SHUBHA THAKUR, Under Secy.

गृह मंत्रालय

नई दिल्ली, 27 नवम्बर, 2003

का. आ. 88.—सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार कथित अधिनियम के प्रयोजनार्थ सरकार के राजपत्रित अधिकारी के पद के समतुल्य होने पर निम्न तालिका के कालम (1) में वर्णित अधिकारी को कथित तालिका के कालम (2) में विनिर्दिष्ट लोक परिसर के लिए उसके क्षेत्राधिकार की सीमाओं के अंतर्गत सम्पदा अधिकारी नियुक्त करती है :—

तालिका

| अधिकारी का पदनाम | लोक परिसर की कोटि तथा क्षेत्राधिकार की स्थानीय सीमा |
|--|--|
| (1) | (2) |
| पुलिस उप महानिरीक्षक (परिचालन), केन्द्रीय रिजर्व पुलिस बल, अगरतला (त्रिपुरा) | उषा बाजार काम्पलैक्स, केन्द्रीय रिजर्व पुलिस बल, अगरतला (त्रिपुरा) में केन्द्रीय रिजर्व पुलिस बल का अथवा उसकी ओर से पट्टे पर लिया जाने वाला परिसर। |

[संख्या ए-11-1/2003-प्रशा.(उ.म.नि./परि)/केरिपुबल/
गृ. मं.-पी एफ तीन]
एम. एस. कलानिया, अवर सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 27th November, 2003

S.O. 88.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column (1) of the Table below, being officer equivalent to the rank of Gazetted Officer of Government to be Estate Officer for the purpose of the said Act, within the limits

of his jurisdiction in respect of the public premises specified in column (2) of the said Table :—

TABLE

| Designation of the Officer | Categories of public premises and local limits of jurisdiction |
|--|--|
| (1) | (2) |
| Deputy Inspector General of Police (Operations). Central Reserve Police Force, Agartala (Tripura) | Premises belonging to or taken on lease on behalf of Central Reserve Police Force at Usha Bazar Complex, Central Reserve Police Force, Agartala (Tripura). |

[No. A. II. 1/2003-Adm. I (DIG)/Ops/
CRPF/MHA-PF-III]
M. S. KALANIA, Under Secy.

नई दिल्ली, 5 दिसम्बर, 2003

का. आ. 89.—सरकारी स्थान (अनाधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा-3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार नीचे सारणी में वर्णित निम्नलिखित अधिकारियों को भारत सरकार के राजपत्रित अधिकारी होने के नाते कथित अधिनियम के प्रयोजनार्थ सम्पदा अधिकारी नियुक्त करती है, जो कथित सारणी के कालम (2) में विनिर्दिष्ट उनके संबंधित लोक परिसरों के क्षेत्राधिकारों की सीमाओं के अंदर कथित अधिनियम के अंतर्गत अथवा उसके द्वारा सौंपे गए कर्तव्यों का निर्वहन और प्रदत्त शक्तियों का प्रयोग करेंगे :—

सारणी

| क्रम अधिकारी का पदनाम सं. | सरकारी आवास की श्रेणी एवं स्थानीय क्षेत्राधिकार |
|---|--|
| 1. कमान्डेन्ट-99 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | हाकिमपेट, सिकन्दराबाद (आन्ध्र प्रदेश) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |
| 2. कमान्डेन्ट-100 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | वस्त्राल, अहमदाबाद (गुजरात) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |
| 3. कमान्डेन्ट-101 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | केवेलरी लाईन, तेलियारगंज इलाहाबाद (उत्तर प्रदेश) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |

| क्रम अधिकारी का पदनाम सं. | सरकारी आवास की श्रेणी एवं स्थानीय क्षेत्राधिकार |
|--|---|
| 4. कमान्डेन्ट-102 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | तलौजा, पंचनंद पनवेल, नवी मुंबई (महाराष्ट्र) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |
| 5. कमान्डेन्ट-103 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | वजीराबाद, दिल्ली-110094 में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |
| 6. कमान्डेन्ट-104 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | रामघाट रोड, अलीगढ़ (उत्तर प्रदेश) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |
| 7. कमान्डेन्ट-105 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | पोडानूर, कोयम्बूर (तमिलनाडु) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |
| 8. कमान्डेन्ट-106 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | टेल्को काम्प्लैक्स, जमशेदपुर (झारखंड) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |
| 9. कमान्डेन्ट-107 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | गोविंदपुरा, भोपाल (मध्य प्रदेश) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |
| 10. कमान्डेन्ट-108 बटालियन, हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल। | परतापुर मेरठ (उत्तर प्रदेश) में हुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल का अथवा उसके लिए पट्टे पर लिया गया परिसर। |

[संख्या ए-II.1/2003-प्रशा.1 (दु. का. ब.)/केरिपुबल/
गृह मंत्रालय/पी. एफ.-3]

एम. एस. कलानिया, अवर सचिव

New Delhi, the 5th December, 2003

S.O. 89.—In exercise of the powers conferred by section 3 of the public premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the following Officers of the Central Reserve Police Force posted to RAF Bns as

Commandant as mentioned in the table below, being Gazetted Officers of the Government of India to be the Estate Officers for the purpose of the said Act who shall exercise the powers conferred and perform the duties imposed on the Estate Officers by or under the said Act, within the limits of their respective jurisdictions in respect of the public premises specified in column (2) of the said Table :—

TABLE

| Sl. No. | Designation of the Officer | Categories of public premises and local limits of jurisdiction |
|---------|---|--|
| 1. | Commandant 99 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Hakimpet, Secunderabad (Andhra Pradesh). |
| 2. | Commandant 100 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Vastral, Ahmedabad (Gujarat). |
| 3. | Commandant 101 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Cavalry Line, Teliarganj, Allahabad (Uttar Pradesh). |
| 4. | Commandant 102 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Taldia, Panchnand Panvel, Navi Mumbai (Maharashtra). |
| 5. | Commandant 103 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Wazirabad, Delhi-94. |
| 6. | Commandant 104 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Ramghat Road, Aligarh (Uttar Pradesh). |

| Sl. No. | Designation of the Officer | Categories of public premises and local limits of jurisdiction |
|---------|---|--|
| 7. | Commandant 105 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Podanur, Coimbatore (Tamil Nadu). |
| 8. | Commandant 106 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Telco Complex, Jamshedpur (Jharkhand). |
| 9. | Commandant 107 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Bhopal (Madhya Pradesh). |
| 10. | Commandant 108 Battalion, Rapid Action Force, Central Reserve Police Force. | Premises belonging to, or taken on lease on behalf of Rapid Action Force, Central Reserve Police Force at Partapur, Meerut (Uttar Pradesh). |

[No. A-II-1/2003-Adm. I (RAF)/CRPF/MHA/PF-III]

M. S. KALANIA, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 19 दिसम्बर, 2003

(आयकर)

का. आ. 90.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23-ग) के उपखंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा “श्री चित्रपुर मठ, बंगलौर” को वर्ष 2002-2003 से 2004-2005 तक के लिए निम्नलिखित शर्तों के अधीन रहते हुए उक्त उप खंड के प्रयोजनार्थ अनुमोदित करती है, अर्थात् :—

- (i) कर-निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगी जिनके लिए इसकी स्थापना की गई है;

- (ii) कर-निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जवाहिरात, फर्नीचर अथवा किसी अन्य वस्तु आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;
- (iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगा, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों;
- (iv) कर निर्धारिती आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष फाइल करेगा;
- (v) विघटन की स्थिति में इसकी अतिरिक्त राशियाँ और परिसम्पत्तियाँ समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएगी।

[अधिसूचना सं. 357/2003/फ. सं. 197/147/97-
आई. टी. ए-1]

आई. पी. एस. बिन्दा, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 19th December, 2003

(INCOME TAX)

S.O. 90.—In exercise of powers conferred by the sub-clause (v) of clause (23C) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the “Shri Chitrapur Math, Bangalore” for the purpose of the said sub-clause for the assessment years 2002-2003 to 2004-2005 subject to the following conditions, namely :—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;

- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
- (iv) the assessee will regularly file its return of income before the Income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a charitable organisation with similar objectives.

[Notification No. 357/2003/F.No. 197/147/2003-ITA-I]

P.S. BINDRA, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 23 दिसम्बर, 2003

का. आ. 91.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा घोषणा करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) के खंड (ख) उपखंड (i) और (ii) के उपबंध बैंक ऑफ इंडिया पर लागू नहीं होंगे, जहां तक कि श्री एम. वेणुगोपालन, अध्यक्ष और प्रबंध निदेशक की नियुक्ति कृषि वित्त निगम लिमिटेड के बोर्ड में निदेशक के रूप में किए जाने से संबंध है।

[फा.सं. 20/13/2000-बी.ओ.-1]

रमेश चन्द, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 23rd December, 2003

S.O. 91.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendations of the Reserve Bank of India, hereby declares that the provisions of sub-clause (i) and (ii) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Bank of India in so far as it relates to the appointment of Shri M. Venugopalan, Chairman and Managing Director, as a director on the Board of Agriculture Finance Corporation Limited.

[F.No. 20/13/2000-B.O.I]

RAMESH CHAND, Under Secy.

नई दिल्ली, 5 जनवरी, 2004

का. आ. 92.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा घोषित करती है कि उक्त अधिनियम की धारा 10 ख की उप-धारा (9) के उपबंध, इस सीमा तक कि ये बैंक के अध्यक्ष एवं मुख्य कार्यपालक अधिकारी के कार्य करने के लिये चार माह से अधिक की अवधि के लिये किसी व्यक्ति को नियुक्त करने से प्रतिबंधित करेंगे, आई.डी.बी.आई. बैंक लिमिटेड पर, 22 दिसम्बर, 2003 से 21 मार्च, 2004 तक, अथवा उक्त बैंक के लिये एक नियमित अध्यक्ष एवं प्रबंध निदेशक के नियुक्त होने तक, जो भी पहले हो, लागू नहीं होंगे।

[फा.सं. 13/8/2003-बी.ओ.ए.]

डी.पी. भारद्वाज, अवर सचिव

New Delhi, the 5th January, 2004

S.O. 92.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendations of the Reserve Bank of India, hereby declares that the provisions of sub-section (9) of section 10B of the said Act shall not to the extent they preclude the bank from appointing a person to carry out the duties of the chairman and Chief and Chief Executive Officer beyond a period exceeding four months, apply to the IDBI Bank Ltd., from 22nd December, 2003 to 21st March, 2004 or till the appointment of a regular chairman and Chief Executive Officer for that bank, whichever is earlier.

[F.No. 13/8/2003-B.O.A.]

D.P. BHARDWAJ, Under Secy.

नई दिल्ली, 5 जनवरी, 2004

का. आ. 93.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा घोषित करती है कि उक्त अधिनियम की धारा 10 ख की उप-धारा (1) और (2) के उपबंध, आई.डी.बी.आई. बैंक लिमिटेड पर, तीन माह की अवधि के लिए 22 दिसम्बर, 2003 से 21 मार्च, 2004 तक, अथवा उक्त बैंक के लिये एक नियमित अध्यक्ष एवं प्रबंध निदेशक के नियुक्त होने तक, जो भी पहले हो, लागू नहीं होंगे।

[फा.सं. 13/8/2003-बी.ओ.ए.]

डी.पी. भारद्वाज, अवर सचिव

New Delhi, the 5th January, 2004

S.O. 93.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendations of the Reserve Bank of India, hereby declares that the

provisions of sub-section (1) and (2) of section 10B of the said Act shall not apply to the IDBI Bank Ltd. for a period of three months from 22nd December, 2003 to 21st March, 2004 or till the appointment of a regular chairman and Chief Executive Officer for that bank, whichever is earlier.

[F.No. 13/8/2003-BOA]

D.P. BHARDWAJ, Under Secy.

नई दिल्ली, 7 जनवरी, 2004

का. आ. 94.—निकेप बीमा और प्रत्यय गारंटी अधिनियम, 1961 (1961 का 47) की धारा 6 की उपधारा (2) के खंड (ii) के साथ पठित धारा 6 की उप-धारा (1) के खंड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके एतद्वारा, नाबार्ड की अध्यक्ष श्रीमती रंजना कुमार को श्री वाई सी नंदा के स्थान पर निकेप बीमा और प्रत्यय गारंटी निगम (डी.आई.सी.जी.सी.) के निदेशक बोर्ड में निदेशक के रूप में अधिसूचना की तारीख से 31-12-2005 अर्थात् उनकी अधिवर्षिता की तारीख तक या अगले आदेश होने तक, जो भी पहले हो, नामित करती है।

[फा.सं. 7/12/95-बी.ओ. I]

रमेश चन्द, अवर सचिव

New Delhi, the 7th January, 2004

S.O. 94.—In exercise of the powers conferred by clause (d) of sub-section (1) of Section 6 read with clause (ii) of sub-section 2 of Section 6 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), the Central Government, in consultation with Reserve Bank of India, hereby nominates Smt. Ranjana Kumar, Chairperson, NABARD as a director on the Board of Directors of Deposit Insurance and Credit Guarantee Corporation (DICGC) from the date of notification and upto 31-12-2005 i.e. the date of her superannuation or until further orders, whichever is earlier vice Shri Y.C. Nanda.

[F.No. 7/12/95-B.O.I.]

RAMESH CHAND, Under Secy.

नई दिल्ली, 7 जनवरी, 2004

का. आ. 95.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उप-धारा (1) के उपबंध, सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2005 तक जलगांव जिला मध्यवर्ती सहकारी बैंक लि., जलगांव, महाराष्ट्र राज्य पर लागू नहीं होंगे।

[फा.सं. 1 (32)/2003-ए सी]

मंगल मराण्डी, अवर सचिव

New Delhi, the 7th January, 2004

S.O. 95.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on the recommendation of the Reserve Bank of India declares that the provisions of sub-section (1) of Section 11 of the said Act shall not apply to The Jalgaon District Central Co-operative Bank Limited, Jalgaon, Maharashtra State, from the date of publication of this notification in the Official Gazette till 31 March 2005.

[F.No. 1(32)/2003-AC]

MANGAL MARNDI, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 96.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा-3 की उपधारा (1) के खंड (ख) के अनुसरण में डा. शीरीश श्रीवास्तव, डीन, चिकित्सा संकाय, सरदार पटेल विश्वविद्यालय को विश्वविद्यालय की सीनेट द्वारा इस अधिसूचना के जारी होने की तिथि से 31-03-2006 तक भारतीय आयुर्विज्ञान परिषद् का सदस्य निर्वाचित किया गया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उप-धारा (1) के उपबंध के अनुसरण में, केन्द्र सरकार तत्कालीन स्वास्थ्य मंत्रालय, भारत सरकार की दिनांक 9 जनवरी, 1960 की अधिसूचना, का.आ. संख्या 138 में एतद्वारा निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में 'धारा 3 की उप-धारा (1) के खंड (ख) के अन्तर्गत निर्वाचित' शीर्षक के अन्तर्गत, क्रम संख्या 73 तथा उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

“73. डा. शीरीश श्रीवास्तव, सरदार पटेल
बी-5, श्रीकृष्ण हास्पिटल कैम्पस, विश्वविद्यालय”
करमसाड-388325 (गुजरात)

[संख्या बी-11013/2/2003-एम ई (नीति-I)]

पी. जी. कलाधरण, अवर सचिव

MINISTRY OF HEALTH AND FAMILY
WELFARE

(Department of Health)

New Delhi, the 31st December, 2003

S.O. 96.—Whereas in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) Dr. Shirish Srivastava, Dean, Faculty of Medicine, Sardar Patel University has been

elected by the Senate of the University to be a member of the Medical Council of India from the date of issue of this Notification upto 31-3-2006.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138, dated the 9th January, 1960, namely :—

In the said Notification, under the heading, 'Elected under clause (b) of sub-section (1) of Section 3', for serial number 73 and the entry relating thereto the following serial number and entry shall be substituted, namely :—

"73. Dr. Shirish Srivastava, Sardar Patel
B-5, Shree Krishna University"
Hospital Campus,
Karamsad-388325 (Gujarat)

[No. V-11013/2/2003-ME (Policy-I)]
P. G. KALADHARAN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 97.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा-3 की उपधारा (1) के खंड (ख) के अनुसरण में प्रो. एम. मोबाशिर, प्राचार्य, जे. एन. मेडिकल कालेज, अलीगढ़ (उत्तर प्रदेश) को इस अधिसूचना के जारी होने की तिथि से 2-10-2004 तक भारतीय आयुर्विज्ञान परिषद् का सदस्य निर्वाचित किया गया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उप-धारा (1) के उपबन्ध के अनुसरण में, केन्द्र सरकार तत्कालीन स्वास्थ्य मंत्रालय, भारत सरकार की दिनांक 9 जनवरी, 1960 की अधिसूचना, का.आ. संख्या 138 में एतद्वारा निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में 'धारा 3 की उप-धारा (1) के खण्ड (ख) के अन्तर्गत निर्वाचित' शीर्षक के अन्तर्गत, क्रम संख्या 42 तथा उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

"42. प्रो. एम. मोबाशिर, अलीगढ़ मुस्लिम
प्राचार्य, विश्वविद्यालय"
जे. एन. मेडिकल कालेज,
अलीगढ़-202002 (उत्तर प्रदेश)

[संख्या वी-11013/2/2003-एम ई (नीति-I)]

पी. जी. कलाधरण, अवर सचिव

New Delhi, the 31st December, 2003

S.O. 97.—Whereas in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102. of 1956) Prof. M. Mobashir, Principal,

J. N. Medical College, Aligarh (Uttar Pradesh) has been elected by the Court of Aligarh Muslim University to be a member of the Medical Council of India from the date of issue of this notification upto 2-10-2004.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138, dated the 9th January, 1960, namely :—

In the said Notification, under the heading, 'Elected under clause (b) of sub-section (1) of Section 3', for serial number 42 and the entry relating thereto the following serial number and entry shall be substituted, namely :—

"42. Prof. M. Mobashir, Aligarh Muslim
Principal, University"
J. N. Medical College,
Aligarh-202002 (U.P.)

[No. V-11013/2/2003-ME (Policy-I)]
P. G. KALADHARAN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 98.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा-3 की उपधारा (1) के खंड (ख) के अनुसरण में शिवाजी विश्वविद्यालय के चिकित्सा संकाय के सदस्य डा. येमुल वी. एल. को शिवाजी विश्वविद्यालय की सीनेट द्वारा इस अधिसूचना के जारी होने की तिथि से भारतीय आयुर्विज्ञान परिषद् का सदस्य निर्वाचित किया गया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उप-धारा (1) के उपबन्ध के अनुसरण में, केन्द्र सरकार तत्कालीन स्वास्थ्य मंत्रालय, भारत सरकार की दिनांक 9 जनवरी, 1960 की अधिसूचना, का.आ. संख्या 138 में एतद्वारा निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में 'धारा 3 की उप-धारा (1) के खण्ड (ख) के अन्तर्गत निर्वाचित' शीर्षक के अन्तर्गत, क्रम संख्या 32 तथा उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

"32. डा. येमुल वी. एल., शिवाजी
डा. वी. एम. मेडिकल कालेज, विश्वविद्यालय"
शोलापुर (महाराष्ट्र)

[संख्या वी-11013/2/2003-एम ई (नीति-I)]

पी. जी. कलाधरण, अवर सचिव

पाद टिप्पण : मूल अधिसूचना भारत के राजपत्र में दिनांक 9-1-1960 की का.आ. संख्या 138 के तहत प्रकाशित हुई थी।

New Delhi, the 31st December, 2003

S.O. 98.—Whereas in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) Dr. Yemul V. L., member of the Faculty of Medicine of Shivaji University, has been elected by the Senate of the Shivaji University to be a member of the Medical Council of India from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138, dated the 9th January, 1960, namely :—

In the said Notification, under the heading, 'Elected under clause (b) of sub-section (1) of Section 3', for serial number 32 and the entries relating thereto the following serial number and entry shall be substituted, namely :—

"32. Dr. Yemul V. L., Shivaji
Dr. V. M. Medical College, University"
Solapur (Maharashtra)

[No. V-11013/2/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

Footnote : The Principal notification was published in the Gazette of India, vide S.O. 138 dated 9-1-1960.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 99.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा-3 की उपधारा (1) के खंड (ख) के अनुसरण में बेरहामपुर विश्वविद्यालय के चिकित्सा संकाय के सदस्य डा. राधा माधव त्रिपाठी को बेरहामपुर विश्वविद्यालय की सीनेट द्वारा इस अधिसूचना के जारी होने की तिथि से 7-10-2004 तक भारतीय आयुर्विज्ञान परिषद् का सदस्य निर्वाचित किया गया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उप-धारा (1) के उपबंध के अनुसरण में, केन्द्र सरकार तत्कालीन स्वास्थ्य मंत्रालय, भारत सरकार की दिनांक 9 जनवरी, 1960 की अधिसूचना, का.आ. संख्या 138 में एतद्वारा निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में 'धारा 3 की उप-धारा (1) के खण्ड (ख) के अन्तर्गत निर्वाचित' शीर्षक के अन्तर्गत, क्रम संख्या 39 तथा उससे

संबंधित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

"39. डा. राधा माधव त्रिपाठी बेरहामपुर
एसोसिएट प्रोफेसर, विश्वविद्यालय"
सामुदायिक चिकित्सा विभाग,
एम. के. सी. जी. मेडिकल कालेज,
बेरहामपुर (गंजम)—उड़ीसा

[संख्या वी-11013/2/2003-एम ई (नीति-I)]

पी. जी. कलाधरण, अवर सचिव

पाद टिप्पण : मूल अधिसूचना भारत के राजपत्र में दिनांक 9-1-1960 की का.आ. संख्या 138 के तहत प्रकाशित हुई थी।

New Delhi, the 31st December, 2003

S.O. 99.—Whereas in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) Dr. Radha Madhab Tripathy, member of the Medical Faculty of the Berhampur University, has been elected by the Senate of the Berhampur University to be a member of the Medical Council of India for the period from the date of issue of this notification upto 7-10-2004.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health, number S.O. 138, dated the 9th January, 1960, namely :—

In the said Notification, under the heading, 'Elected under clause (b) of sub-section (1) of Section 3', for serial number 39 and the entry relating thereto the following serial number and entry shall be substituted, namely :—

"39. Dr. Radha Madhab Tripathy, Berhampur
Associate Professor, University"
Deptt. of Community Medicine,
M.K.C.G. Medical College,
Berhampur (Ganjam), Orissa.

[No. V-11013/2/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

Footnote : The Principal notification was published in the Gazette of India, vide S.O. 138 dated 9-1-1960.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 100.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा-3 की उपधारा (1) के खंड (ख) के अनुसरण में डा. यू. एस. धालीवाल, प्राचार्य, श्री गुरु राम दास आयुर्विज्ञान तथा अनुसंधान संस्थान, अमृतसर को बाबा फरीद स्वास्थ्य विज्ञान विश्वविद्यालय, फरीदकोट की सीनेट द्वारा इस अधिसूचना के जारी

होने की तिथि से भारतीय आयुर्विज्ञान परिषद् का सदस्य नियोजित किया गया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उप-धारा (1) के उपबंध के अनुसरण में, केन्द्र सरकार तत्कालीन स्वास्थ्य मंत्रालय, भारत सरकार की दिनांक 9-जनवरी, 1960 की अधिसूचना, का.आ. संख्या 138 में संशुद्ध निर्देशिका और संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में 'धारा 3 की उप-धारा (1) के खण्ड (ख) के अन्तर्गत नियोजित' शीर्षक के अन्तर्गत, क्रम संख्या 78 तथा उससे संबंधित प्रविष्टियों के बाद निम्नलिखित प्रविष्टियां जोड़ी जाएंगी, अर्थात्:—

"79. डा. यू. एस. धिलीवाल, बाबा फरीद
प्रचार्य, स्वास्थ्य विज्ञान
श्री गुरु राम दास आयुर्विज्ञान विश्वविद्यालय"
तत्काल अनुसंधान संस्थान,
अमृतसर (पंजाब)

[संख्या बी-11013/2/2003-एम ई (नीति-1)]

पी. जी. कलाधरण, अवर सचिव

पद दिवस: मूल अधिसूचना भारत के राजपत्र में दिनांक 9-1-1960 की का.आ. संख्या 138 के तहत प्रकाशित हुई थी।

New Delhi, the 31st December, 2003

S.O. 100.—Whereas in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) Dr. U. S. Dhaliwal, Principal, Sri Guru Ram Das Institute of Medical Sciences & Research, Amritsar has been elected by the Senate of the Baba Farid University of Health Sciences, Faridkot to be a member of the Medical Council of India with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health, number S.O. 138, dated the 9th January, 1960, namely:—

In the said Notification, under the heading, 'Elected under clause (b) of sub-section (1) of Section 3', after serial number 78 and the entries relating thereto the following entries shall be inserted, namely:—

"79. Dr. U. S. Dhaliwal, Baba Farid
Principal, Sri Guru Ram Das University of
Institute of Medical Sciences Health Sciences"
& Research,
Amritsar (Punjab)

[No. V-11013/2/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

Foot Note : The Principal notification was published in the Gazette of India, vide S.O. 138 dated 9-1-1960.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 101.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) के प्रयोग हेतु यूनिवर्सिटी आफ बेसल द्वारा प्रदत्त चिकित्सा अर्हता बेसिक मेडिकल डिग्री; उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त चिकित्सा अर्हता है;

और, डा. पवन सरा वेलुपिल्लई, मलेशिया मूलिक जिनके पास उक्त अर्हता है श्री सत्य साई इंस्टीट्यूट आफ हायर मेडिकल साइंसेज, प्रशान्तिग्राम, अनंतपुरा जिला (आंध्र प्रदेश) से धर्माथ (चैरिटेबल) कार्य हेतु और न कि व्यक्तिगत लाभ हेतु जुड़े हैं;

अतः, अब, उक्त अधिनियम की धारा 14 की उप-धारा (1) के खण्ड (ग) के अनुसरण में, केन्द्र सरकार एतद्द्वारा निर्दिष्ट करती है कि भारत में डा. पवन सरा वेलुपिल्लई द्वारा आयुर्विज्ञान की प्रवृत्ति करने की अवधि:—

(क) इस अधिसूचना के जारी होने की तिथि से एक वर्ष की अवधि; अथवा

(ख) उस अवधि जिसके दौरान डा. पवन सरा वेलुपिल्लई, श्री सत्य साई इंस्टीट्यूट आफ हायर मेडिकल साइंसेज, प्रशान्तिग्राम, अनंतपुरा जिला (आंध्र प्रदेश) से जुड़े हैं, जो भी कम हो, तक सीमित रहेगी।

[संख्या बी-11016/4/2003-एम ई (नीति-1)]

पी. जी. कलाधरण, अवर सचिव

New Delhi, the 31st December, 2003

S.O. 101.—Whereas medical qualification Basic Medical Degree granted by University of Basel is a recognised medical qualification for the purpose of the Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And, whereas, Dr. Pavan Sara Velupillai, Malaysian national, who possess the said qualification is attached to Sri Sathya Sai Institute of Higher Medical Sciences, Prashanthigram, Ananthapura Distt. (Andhra Pradesh) for the purpose of charitable work and not for personal gain;

Now, therefore, in pursuance of clause (c) of sub-section (1) of the Section 14 of the said Act, the Central Government hereby specifies that the period of practice of medicine by Dr. Pavan Sara Velupillai in India shall be limited to:—

(a) a period of one year from the date of issue of this notification; or

- (b) the period during which Dr. Pavan Sara Velupillai is attached to Sri Sathya Sai Institute of Higher Medical Sciences, Prashanthigram, Ananthapura Distt. (Andhra Pradesh), whichever is shorter.

[No. V-11016/1/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 102.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) के प्रयोजन हेतु यूनिवर्सिटी आफ कोलंबो द्वारा प्रदत्त चिकित्सा अर्हता एम.डी.; उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त चिकित्सा अर्हता है;

और, डा. एम. विजिया तुंगे, श्रीलंका के नागरिक जिनके पास उक्त अर्हता है, मेडिकल रिसर्च फाउंडेशन, कालेज रोड, चेन्नई-600006 से धर्मार्थ (चैरिटेबल) कार्य हेतु और न कि व्यक्तिगत लाभ हेतु जुड़े हैं;

अतः, अब, उक्त अधिनियम की धारा 14 की उप-धारा (1) के खण्ड (ग) के अनुसरण में, केन्द्र सरकार एतद्वारा विनिर्दिष्ट करती है कि भारत में डा. एम. विजिया तुंगे द्वारा आयुर्विज्ञान की प्रैक्टिस करने की अवधि :—

- (क) इस अधिसूचना के जारी होने की तिथि से छह माह की अवधि; अथवा
- (ख) उस अवधि जिसके दौरान डा. एम. विजिया तुंगे मेडिकल रिसर्च फाउंडेशन, कालेज रोड, चेन्नई-600006 से जुड़े हैं, जो भी कम हो, तक सीमित रहेगी।

[संख्या वी-11016/1/2003-एम ई (नीति-I)]

पी. जी. कलाधरण, अवर सचिव

New Delhi, the 31st December, 2003

S.O. 102.—Whereas medical qualification M.D. granted by University of Colombo is a recognised medical qualification for the purpose of Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And, whereas, Dr. M. Wijiya Tunge, Srilankan national, who possess the said qualification is attached to Medical Research Foundation, College Road, Chennai-600006 for the purpose of charitable work and not for personal gain;

Now, therefore, in pursuance of clause (c) of sub-section (1) of the Section 14 of the said Act, the Central Government hereby specifies that the period of practice

of medicine by Dr. M. Wijiya Tunge, in India shall be limited to :—

- (a) a period of six months from the date of issue of this notification; or
- (b) the period during which Dr. M. Wijiya Tunge is attached to Medical Research Foundation, College Road, Chennai-600006, whichever is shorter.

[No. V-11016/1/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 103.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) के प्रयोजन हेतु आन्ध्र यूनिवर्सिटी द्वारा प्रदत्त चिकित्सा अर्हता एम.बी.बी.एस., उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त चिकित्सा अर्हता है;

और, डा. काकराला जानकी रमैया, अमेरिकी नागरिक जिनके पास उक्त अर्हता है श्री सत्य साई इंस्टीट्यूट आफ मेडिकल साइंसेज, प्रशान्तिग्राम, जिला-अनंतपुर (आन्ध्र प्रदेश) से धर्मार्थ (चैरिटेबल) कार्य हेतु और न कि व्यक्तिगत लाभ हेतु जुड़े हैं;

अतः, अब, उक्त अधिनियम की धारा 14 की उप-धारा (1) के खण्ड (ग) के अनुसरण में, केन्द्र सरकार एतद्वारा विनिर्दिष्ट करती है कि भारत में डा. काकराला जानकी रमैया, द्वारा आयुर्विज्ञान की प्रैक्टिस करने की अवधि :—

- (क) इस अधिसूचना के जारी होने की तिथि से छह माह की अवधि; अथवा
- (ख) उस अवधि जिसके दौरान डा. काकराला जानकी रमैया, श्री सत्य साई इंस्टीट्यूट ऑफ हायर मेडिकल साइंसेज, प्रशान्तिग्राम, जिला-अनंतपुर (आन्ध्र प्रदेश) से जुड़े हैं, जो भी कम हो, तक सीमित रहेगी।

[संख्या वी-11016/1/2003-एम ई (नीति-I)]

पी. जी. कलाधरण, अवर सचिव

New Delhi, the 31st December, 2003

S.O. 103.—Whereas medical qualification MBBS granted by Andhra University is a recognised medical qualification for the purpose of the Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And, whereas, Dr. Kakarala Janaki Ramaiah, American national, who possess the said qualification is attached to Sathya Sri Sai Institute of Higher Medical Sciences, Prashanthigram, Distt. Anantapur (Andhra Pradesh) for the purpose of charitable work and not for personal gain;

Now, therefore, in pursuance of clause (c) of sub-section (1) of the Section 14 of the said Act, the Central Government hereby specifies that the period of practice of medicine by Dr. Kakarala Janaki Ramaiah in India shall be limited to :—

- (a) a period of six months from the date of issue of this notification; or
- (b) the period during which Dr. Kakarala Janaki Ramaiah is attached to Sri Sathya Sai Institute of Higher Medical Sciences, Prashanthigram, Distt. Anantapur (Andhra Pradesh), whichever is shorter.

[No. V-11016/1/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2003

का. अ. 104.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) के प्रयोग हेतु यूनिवर्सिटी ऑफ बेसल द्वारा प्रदत्त चिकित्सा अर्हता बेसिक मेडिकल डिग्री; उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त चिकित्सक अर्हता है;

और, डा. चंदन चट्टोपाध्याय, स्वीस नागरिक, जिनके पास उक्त अर्हता है इंस्टीट्यूट ऑफ चार्ल्स हैल्थ, डा. बिरेश गुहा स्ट्रीट, कोलकाता-700017 से धर्मार्थ (चैरिटेबल) कार्य हेतु और न कि व्यक्तिगत लाभ हेतु जुड़े हैं;

अतः, अब, उक्त अधिनियम की धारा 14 की उप-धारा (1) के खण्ड (ग) के अनुसार में, केन्द्र सरकार एतद्वारा विनिर्दिष्ट करती है कि भारत में डा. चंदन चट्टोपाध्याय, द्वारा आयुर्विज्ञान की प्रैक्टिस करने की अवधि :—

- (क) इस अधिसूचना के जारी होने की तिथि से एक वर्ष की अवधि; अथवा
- (ख) उस अवधि जिसके दौरान डा. चंदन चट्टोपाध्याय, इंस्टीट्यूट ऑफ चार्ल्स हैल्थ, डा. बिरेश गुहा स्ट्रीट, कोलकाता-700017 से जुड़े हैं, जो भी कम हो, तक सीमित रहेगी।

[संख्या वी-11016/1/2003-एम ई (नीति-1)]

पी. जी. कलाधरन, अवर सचिव

New Delhi, the 31st December, 2003

S.O. 104.—Whereas medical qualification Basic Medical Degree granted by University of Basel is a recognised medical qualification for the purpose of the Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And, whereas, Dr. Chandon Chattopadhyay, Swiss national, who possess the said qualification is attached to

Institute of Child Health, Dr. Bireah Guha Street, Kolkata-700017 for the purpose of charitable work and not for personal gain;

Now, therefore, in pursuance of clause (c) of sub-section (1) of the Section 14 of the said Act, the Central Government hereby specifies that the period of practice of medicine by Dr. Chandon Chattopadhyay in India shall be limited to :—

- (a) a period of one year from the date of issue of this notification; or
- (b) the period during which Dr. Chandon Chattopadhyay is attached to Institute of Child Health, Dr. Bireah Guha Street, Kolkata-700017, whichever is shorter.

[No. V-11016/1/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2003

का. अ. 105.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) के प्रयोग हेतु बम्बई यूनिवर्सिटी द्वारा प्रदत्त चिकित्सा अर्हता एम.बी.बी.एस.; उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त चिकित्सक अर्हता है;

और, डा. यतीश बिचारदास मर्चेंट, जिनके पास उक्त अर्हता है श्री सत्य साई जनरल हॉस्पिटल, प्रशान्तिनिलयन, अनंतपुर जिला (आंध्र प्रदेश) से धर्मार्थ (चैरिटेबल) कार्य हेतु और न कि व्यक्तिगत लाभ हेतु जुड़े हैं;

अतः, अब, उक्त अधिनियम की धारा 14 की उप-धारा (1) के खण्ड (ग) के अनुसार में, केन्द्र सरकार एतद्वारा विनिर्दिष्ट करती है कि भारत में डा. यतीश बिचारदास मर्चेंट द्वारा आयुर्विज्ञान की प्रैक्टिस करने की अवधि :—

- (क) इस अधिसूचना के जारी होने की तिथि से छह माह की अवधि; अथवा
- (ख) उस अवधि जिसके दौरान डा. यतीश बिचारदास मर्चेंट, श्री सत्य साई इंस्टीट्यूट जनरल हॉस्पिटल, प्रशान्तिनिलयन, अनंतपुर जिला (आंध्र प्रदेश) से जुड़े हैं, जो भी कम हो, तक सीमित रहेगी।

[संख्या वी-11016/1/2003-एम ई (नीति-1)]

पी. जी. कलाधरन, अवर सचिव

New Delhi, the 31st December, 2003

S.O. 105.—Whereas medical qualification MBBS granted by Bombay University is a recognised medical qualification for the purpose of the Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And, whereas, Dr. Yatish Bechardas Merchant, who possess the said qualification is attached to Sri Sathya Sai General Hospital, Prasanthi Nilayam, Ananthapur Distt. (A.P.), for the purpose of charitable work and not for personal gain;

Now, therefore, in pursuance of clause (c) of sub-section (1) of the Section 14 of the said Act, the Central Government hereby specifies that the period of practice of medicine by Dr. Yatish Bechardas Merchant in India shall be limited to :—

- (a) a period of six months from the date of issue of this notification; or
- (b) the period during which Dr. Yatish Bechardas Merchant is attached to Sri Sathya Sai General Hospital, Prasanthi Nilayam, Ananthapur Distt., (A.P.), whichever is shorter.

[No. V-11016/1/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 106.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) के प्रयोजन हेतु इण्डियाना यूनिवर्सिटी द्वारा प्रदत्त चिकित्सा अर्हता एम.डी.; उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त चिकित्सा अर्हता है;

और, डा. अशोक भाष्करन पिल्लई, अमेरिकी नागरिक जिनके पास उक्त अर्हता है अमृता इंस्टीट्यूट आफ मेडिकल साइंसेज एंड रिसर्च सेन्टर, अमृता लेन, एलमक्कारा पी.ओ., कोचीन-682026 से धर्मार्थ (चैरिटेबल) कार्य हेतु और न कि व्यक्तिगत लाभ हेतु जुड़े हैं;

अतः, अब, उक्त अधिनियम की धारा 14 की उप-धारा (1) के खण्ड (ग) के अनुसरण में, केन्द्र सरकार एतद्वारा विनिर्दिष्ट करती है कि भारत में डा. अशोक भाष्करन पिल्लई द्वारा आयुर्विज्ञान की प्रैक्टिस करने की अवधि :—

- (क) इस अधिसूचना के जारी होने की तिथि से छह माह की अवधि; अथवा
- (ख) उस अवधि जिसके दौरान डा. अशोक भाष्करन पिल्लई, अमृता इंस्टीट्यूट आफ मेडिकल साइंसेज एंड रिसर्च सेन्टर, अमृता लेन, एलमक्कारा पी.ओ., कोचीन-682026 से जुड़े हैं, जो भी कम हो, तक सीमित रहेगी।

[संख्या वी-11016/1/2003-एम ई (नीति-I)]

पी. जी. कलाधरण, अवर सचिव

New Delhi, the 31st December, 2003

S.O. 106.—Whereas medical qualification Doctor of Medicine granted by Indiana University is a recognised medical qualification for the purpose of the Indian Medical

Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And, whereas, Dr. Ashok Bhaskaran Pillai, American National, who possess the said qualification is attached to Amrita Institute of Medical Sciences & Research Centre, Amrita Lane, Elamakkara P.O., Cochin-682026 for the purpose of charitable work and not for personal gain;

Now, therefore, in pursuance of clause (c) of sub-section (1) of the Section 14 of the said Act, the Central Government hereby specifies that the period of practice of medicine by Dr. Ashok Bhaskaran Pillai in India shall be limited to :—

- (a) a period of six months from the date of issue of this notification; or
- (b) the period during which Dr. Ashok Bhaskaran Pillai is attached to Amrita Institute of Medical Sciences & Research Centre, Amrita Lane, Elamakkara P.O., Cochin-682026, whichever is shorter.

[No. V-11016/1/2003-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 107.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) के प्रयोजन हेतु यूनिवर्सिटी ऑफ होडलबरी द्वारा प्रदत्त चिकित्सा अर्हता एम.डी.; उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त चिकित्सा अर्हता है;

और, डा. मैथ्यु कुरुनथोटिकल उम्मेन, जर्मन नागरिक जिनके पास उक्त अर्हता है क्रिश्चियन सेंटर फार टोटल डेवलपमेंट, तिरुवनन्तपुरम से धर्मार्थ (चैरिटेबल) कार्य हेतु और न कि व्यक्तिगत लाभ हेतु जुड़े हैं;

अतः, अब, उक्त अधिनियम की धारा 14 की उप-धारा (1) के खण्ड (ग) के अनुसरण में, केन्द्र सरकार एतद्वारा विनिर्दिष्ट करती है कि भारत में डा. मैथ्यु कुरुनथोटिकल उम्मेन, द्वारा आयुर्विज्ञान की प्रैक्टिस करने की अवधि :—

- (क) इस अधिसूचना के जारी होने की तिथि से एक वर्ष की अवधि; अथवा
- (ख) उस अवधि जिसके दौरान डा. मैथ्यु कुरुनथोटिकल उम्मेन, क्रिश्चियन सेंटर फार टोटल डेवलपमेंट, तिरुवनन्तपुरम-695004 से जुड़े हैं, जो भी कम हो, तक सीमित रहेगी।

[संख्या वी-11016/1/2003-एम ई (नीति-I)]

पी. जी. कलाधरण, अवर सचिव

New Delhi, the 31st December, 2003

S.O. 107.—Whereas medical qualification M.D. granted by University of Heidelberg is a recognised medical qualification for the purpose of the Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And whereas, Dr. Mathew Kurunthothal Oommen, German national, who possess the said qualification is attached to Christian Centre for Total Development, Thiruvananthapuram for the purpose of charitable work and not for personal gain;

Now, therefore, in pursuance of clause (c) of sub-section (1) of the Section 14 of the said Act, the Central Government hereby specifies that the period of practice of medicine by Dr. Mathew Kurunthothal Oommen in India shall be limited to :—

- a period of one year from the date of issue of this notification; or
- the period during which Dr. Mathew Kurunthothal Oommen is attached to Christian Centre for Total Development, Thiruvananthapuram-695004 whichever is shorter.

[No. V-11016/1/2003-ME (Policy-I)]
P. G. KALADHARAN, Under Secy.

(पी.एम.एस. अनुभाग)

नई दिल्ली, 8 जनवरी, 2004

क्रा. आ. 108.—दंत चिकित्सा अधिनियम, 1948 (1948 का 16) के उप खंड (2) की धारा 10 द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार भारतीय दंत चिकित्सा परिषद् के साथ परामर्श करने के पश्चात् एतद्वारा उपर्युक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, अर्थात् :—

क्रम संख्या 59 और उससे संबंधित प्रविष्टियों के पश्चात् अनुसूची के भाग I में निम्नलिखित क्रम संख्या और प्रविष्टियां जोड़ी जाएंगी, अर्थात् :—

| | | |
|--|---|--|
| 60. एम.जे.पी. रूहेलखंड विश्वविद्यालय, बरेली, उत्तर प्रदेश। | बेचस्तर आफ हेंटल सर्जरी विनायक मिशनस डेन्टल कालेज, सीतापुर, उत्तर प्रदेश में सैक्षिक सत्र 1996-1997, 1997-1998 और 1998-1999 हेतु दाखिला लिए गए बी.डी.एस. छात्रों के संबंध में दंत चिकित्सा अर्हता मान्यताप्राप्त अर्हता होगी, यदि यह 20-1-2003 को अथवा उसके बाद दी जाएगी। | बी.डी.एस. एम.जे.पी. रूहेलखंड विश्वविद्यालय, बरेली, उत्तर प्रदेश। |
|--|---|--|

[क्रा. सं. सी. 13013/35/2001-पी.एम.एस.]

ए. के. सिंह, अपर सचिव

(PMS Section)

New Delhi, the 28th January, 2004

S.O. 108.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

In Part I of the Schedule, after Serial Number, 59, and the entries relating thereto, the following Serial Number and entries shall be added, namely :—

| | | |
|---|--|---|
| 60. MJP Rohilkhand University, Bareilly, U.P. | Bachelor of Dental Surgery The dental qualification shall be recognised qualification in respect of the BDS students admitted for the academic session 1996-1997, 1997-1998 and 1998-1999 in Vinayaka Mission's Dental College, Sitapur, U.P., if granted on or after 20-1-2003. | BDS MJP Rohilkhand University, Bareilly, U.P. |
|---|--|---|

[F. No. C. 13013/35/2001-PMS]

A. K. SINGH, Under Secy.

नई दिल्ली, 8 जनवरी, 2004

क्रा. आ. 109.—दंत चिकित्सा अधिनियम, 1948 (1948 का 16) के उप खंड (2) की धारा 10 द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार भारतीय दंत चिकित्सा परिषद् के साथ परामर्श करने के पश्चात् एतद्वारा उपर्युक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, अर्थात् :—

क्रम संख्या 47 और उससे संबंधित प्रविष्टियों के सामने अनुसूची के भाग I में निम्नलिखित क्रम संख्या और प्रविष्टियां जोड़ी जाएंगी अर्थात् :—

| | | |
|---|--|--|
| 47. राजीव गांधी मास्टर ऑफ डेंटल सर्जरी (क) एम.डी.एस. स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर। | ए.के.ई.एस.एस. निजालिंगप्पा (चेरियोडॉन्टिक्स) इंस्टीट्यूट ऑफ डेंटल साइंसेज एंड रिसर्च, गुलबर्गा के एम.डी.एस. छात्रों के संबंध में निम्नलिखित दंत चिकित्सा अर्हता मान्यताप्राप्त अर्हता होगी, यदि यह 1-10-2001 को अथवा इसके पश्चात् दी जाएगी : | राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर। |
|---|--|--|

एम.डी.एस. (चेरियोडॉन्टिक्स)

[क्रा. सं. सी. 12018/28/2002-पी.एम.एस.]

ए. के. सिंह, अपर सचिव

New Delhi, the 8th January, 2004

S.O. 109.—In exercise of the power conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

In Part I of the Schedule, against Serial Number 47, and the entries relating thereto, the following entries shall be added, namely :—

| | | |
|---|--|---|
| 47. Rajiv Gandhi University of Health Sciences, Bangalore | Master of Dental Surgery The following dental qualification shall be recognised qualification in respect of MDS students of H.K.E.S.S. Nijalingappa Institute of Dental Sciences & Research, Gulbarga, if granted on or after 1-10-2001: | (a) MDS (Periodontics) Rajiv Gandhi University of Health Sciences, Bangalore. |
|---|--|---|

MDS (Periodontics)

[F.No. V. 12018/28/2002-PMS]

A. K. SINGH, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 17 दिसम्बर, 2003

का. आ. 110.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, सोलापुर के पंचाट [संदर्भ संख्या (आई. डी. ए.) सं.-20/98] को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-12-2003 को प्राप्त हुआ था।

[सं. एल. 12025/6/2003-आई. आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 17th December, 2003

S.O. 110.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [(I. D. A.) No. 20/98] of the Labour Court, Solapur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-12-2003.

[No. L-12025/6/2003-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF JUDGE, II LABOUR COURT,
SOLAPUR AT SOLAPUR

Reference (I. D. A.) No. 20/98

Adjudication between :

The Regional Manager-IV, : I party
State Bank of India,
East Street, Pune-I

AND

Shri P. V. Mane, : II Party
649, North Kasaba,
Near Guruji's Printing Press,
Gavandi Galli,
Solapur

Coram : Shri K. B. Wagh, The Presiding Officer

Appearances :

Shri N. R. Khandal, Advocate, for I Party.

Shri G. R. Joshi, Advocate, for II Party.

FINAL AWARD

(Delivered on 10-11-2003)

1. Present reference is referred by the Desk Officer, Government of India, Ministry of Labour, New Delhi, for adjudication of dispute between The Regional Manager-IV, State Bank of India, Pune (hereinafter referred to as the I Party) and Shri P. V. Mane, Solapur (hereinafter referred to as the II Party).

2. In response to notice the II Party appeared and filed his Statement of Claim at Exh. U-6 stating that he was employed with I party in February 1968 as a Messenger. In 1977 he was promoted as a clerk. He was dismissed from service by order dated 7-2-89. He has rendered continuous and unblemished service from the date of appointment till termination of his service. He was not issued any show cause notice, chargesheet nor any punishment was inflicted upon him.

3. It is further submitted that the I party bank issued a chargesheet dated 20-7-88 to II party alleging charges of misappropriation and absenteeism. He has replied the chargesheet. The I party Bank had also issued chargesheet to one Shri A. V. Deshpande on 25-8-88. Said Shri Deshpande was working as a Head Clerk. The charges levelled against said Shri Deshpande and II party are same and identical based on the same instance.

4. II party submits that one Shri Hardikar was appointed as an enquiry officer. II party was represented

by Shri Ghadage. Before the Enquiry Officer, no any statements of witness of the Management were recorded. If any statement of witnesses were recorded it was behind and back of the II party. Opportunity for cross-examination was not given to II party. The Enquiry Officer himself inspected some record and came to the conclusion of his own. Copy of finding was not issued to the II party. Findings of Enquiry Officer are perverse. Therefore enquiry conducted against the II party is illegal, invalid and the findings are perverse. The II party was issued a chargesheet containing false charges. Shri A. V. Deshpande who used to supervise the work of II party was also issued a chargesheet. After enquiry said Shri Deshpande was reinstated in service though he was held guilty of misconduct. When chargesheet was issued to the II party the office bearers and superiors of the II party working in the Bank have instructed and advised not to contest the Departmental Enquiry because the Head Clerk of the Bank was also chargesheeted. The officers and superiors of the II party assured II party that a minor punishment will be inflicted upon him and also advised not to contest the enquiry and induced II party to give apology to the charges levelled against him. The Superiors and the officials of the II party played pressure tactics and induced him to give apology with a view to save Shri Deshpande from the grave and serious charges. The II party relying on the assurances given by the superiors and the officers of the I party, admitted apology to the charges levelled against him. But the superiors and officers of the Bank did not keep their promise and used the apology of the II party as a weapon against him. He was hopeful that the officials and the superiors will not take the matter seriously and he would be inflicted minor punishment. Therefore he pleaded guilt. However, II party was discriminated by terminating his service, whereas said Shri Deshpande was not dismissed. The II party submits that he was working as a Dispatch Clerk. He was entrusted duties of maintenance of postage books and registered letters, to dispatch registers. He has not made any superfluous entries in the record so also he did not place any fraudulent figures before sum total of postage in the postage and other related books. He did not make any deliberate mistakes in total. He did not tear out any page of the registers. The Head Clerk Shri Deshpande was supervising and checking the entries made in the books, he was also checking and inspecting the daily balances, cash in hand, postage at hand with the II party, books of account, registers and was signing the above said registers in token of the correct entries are made. If any mistake, any false entries would have noticed by Shri Deshpande, he would have filed reports against the II party to his superiors and the II party would have issued memoes at that time only. As Shri Deshpande found the record was intact and the balances of cash and postage were correct therefore he had checked and signed in token of correctness of the entries. Therefore the work which was performed by the II party during the period from 23rd December 1985 to

13th October 1987 was absolutely correct and did not raise any doubts to the superiors or the II party. It is submitted that II party has not committed any misconduct alleged in the chargesheet. II party was made a scape goat to save Mr. Deshpande.

5. II party was a member of the union namely S. B. I. Employees Union (Bombay Circle) which was not a recognised union. The II party has referred his case to S. B. I. and subsidy Bank Employees Union a recognised union and the case of the II party was defended by then Assistant General Secretary Shri R. Y. Ghatge from Pune.

6. It is further submitted that papers of the II party were also misplaced. The defence taken by the II party during the course of enquiry regarding torn pages was not considered by the enquiry officer. The enquiry officer travelled outside of his scope of the enquiry. It will reveal that the punishment of dismissal was shockingly disproportionate punishment in the light of punishment given to Shri Deshpande. Therefore the II party has prayed for a declaration that termination order dated 7-2-89 is illegal and invalid and further prayed for setting aside the same and to direct I party Bank to reinstate him with full back wages and continuity of service and to pass any other appropriate order in his favour.

7. Whereas I party has filed written statement Exh. C-8 stating that II party was dismissed from service by order dated 7-2-89. He has raised dispute in the year 1995 by filing application to Assistant Labour Commissioner (C), Pune, after of about 6 years which is not legal and valid. It is submitted that the dispute raised in the present reference is suffering from laches and barred by Law of Limitation. The basic principle of Law helps only those person who are alert about their rights has been ignored by the Assistant Labour Commissioner, while referring the case of the II party to the Labour Court for adjudication of dispute and therefore reference is liable to be dismissed summarily.

8. It is further submitted that II party is no more in service of the I party at the time of filing present claim. Therefore present dispute is not an industrial dispute. It is denied that II party has worked continuously with unblemished record.

9. It is admitted that Shri A. V. Deshpande, Head Clerk was also issued a chargesheet, but it is denied that charges levelled against said Shri A. V. Deshpande were same and identical.

10. It is admitted that enquiry officer was appointed by the I party, however, contentions regarding non-recording statement of any witness and not extending of opportunity for cross examination etc. are irrelevant and unwarranted considering the voluntary and unequivocal and unambiguous reply dated 20-8-88 submitted by II party.

to the charges levelled against him. The enquiry officer has rightly himself has inspected some records as it was necessary and expedient in order to make his enquiry impartial, objectively without making undue haste or injustice to either of the parties in order to come to the right conclusion and also to give proper reasonable opportunity to the II party. In view of 'Shastri Award' there is no obligation of the I party to issue copy of findings to the II party. It is denied that findings are perverse. It is denied that enquiry conducted against the II party is invalid stating that allegations of II party are by way of after thought because the enquiry is conducted as per principles of natural justice with fair play. It is submitted that charges levelled against Shri A. V. Deshpande were entirely different. As he was alleged of failure of his supervising duty which were less serious as compared to the charges levelled against the II party. It is submitted that Shri A. V. Deshpande against whom charges have been proved in the enquiry is also subsequently thrown out of service as he was compulsorily retired taking into consideration his age and number of years put service by him with I party. Therefore it cannot be said that there is discrimination in taking disciplinary action by the I party against the II party and Shri A. V. Deshpande. Punishment imposed on Shri A. V. Deshpande cannot be equated as minor punishment. I party denied that when chargesheet was issued to II party the officers and supervisors of the I party assured to the II party that a minor punishment will be inflicted upon him and also advised not to contest the departmental enquiry or that induced II party to give apology to the charges levelled against him. It is denied that superiors and officers of II party played pressure tactics and induced II party to give apology with a view to save Shri Deshpande from grave and serious charges. I party submitted that it is also false, concocted and after thought story that the II party relying on the assurances given by the Superiors and the Officers of the I party, admitted or submitted an apology to the charges levelled against him. After taking into consideration the reply dated 20-8-1988 given by the II party to the charges levelled against him, it can safely be concluded by ordinary prudence that the apology submitted by II party by admitting his guilt with considered reasons thereof, because of which, he was helpless in indulging or in committing the misappropriation etc. among the other charges regarding him, the reply dated 20-8-88 of the II party is voluntarily, unequivocal with fair mind, with the guidance of his union representative. Taking into consideration the unequivocal reply of the II party and the graveness of the charges and after extending all reasonable and possible opportunities for defending the charges to II party and the enquiry report, the I party has taken an appropriate legal decision/action of removal from service of II party in the interest of the I party. Therefore, the question of not keeping promises or using the apology of the II party as weapon does not arise at all. There is no discrimination in giving punishment to the II party. The II

party has come with a false case only with a view of getting relief of reinstatement by taking disadvantage of case of Shri Deshpande.

11. It is denied that defence of the II party regarding torn pages of the register was not considered. It is denied that enquiry officer has travelled outside the scope of enquiry. It is submitted that I party is banking institute dealing with financial aspect with public at large. The II party was required to work on all tables dealing with various subjects including handling of cash, in cash section and issue of D. D. etc. In dealing with such duties, the employee of I party including the II party are required to possess high integrity, honest, faithfulness/confidence, good behaviour with high moral. In the case of II party the I party has lost all these characteristics and found indulging of misappropriation to the extent of Rs. 20,641.90 and also committing forgery and tearing of valuable registers and other such irregularities etc. and therefore it was thought fit to impose punishment of dismissal from service and this cannot be called at any cost, shockingly disproportionate punishment. This punishment of II party cannot be considered with punishment of Shri Deshpande as Deshpande's case was altogether on different footing. It is submitted that Court cannot set in appeal on the order of the I party and this Court has no power to interfere with discretion of the I party. The W. S. was amended stating that if this Court comes to the conclusion that the departmental enquiry was not valid the management be given opportunity to prove charges levelled against II party by leading evidence before the Court and to secure the ends of justice. Lastly it is prayed that reference be dismissed with costs.

12. Issues framed by learned predecessor and my findings thereon are as under :

| ISSUES | FINDINGS |
|--|---|
| 1. Does the II party prove that the enquiry conducted against him by the I party is not fair, proper and in accordance with the principles of natural justice ? | .. No. As per order passed on 26-9-2000: vide Award-I. |
| 2. Does the I party prove the charges levelled against the II party, on the basis of evidence recorded in the enquiry and/or before the court to the satisfaction of the court ? | .. Except the charge of absenteeism other charges levelled against the II party are proved. |
| 3. Does the II party prove that the punishment imposed on him deserves interference ? | .. No. |

4. Does the II party prove that ... No.
he is entitled for the reliefs
as prayed or otherwise ?
5. What order ? ... As per award
passed below.

REASONS

Issue No. 1 :

13. With reference to this issue it is observed that as per Award-I dated 26-9-2000 this issue is already adjudicated and decided by learned predecessor in the negative and thus it stands answered accordingly.

14. Heard learned Advocates for both parties. Perused material on record and after considering the same I came to the findings as stated above for the following reasons.

Issue No. 2 :

15. With reference to this issue it is pertinent to mention that II party Shri P. V. Mane working as a Dispatch Clerk in the employment of the I party was issued a chargesheet dated 20-7-88 alleging that during the period from 23-12-85 to 13-10-87 at Solapur Belives Branch, he has committed serious irregularities in the maintenance of postage books & Registered letters Despatch Registers and perpetrated a fraud of Rs. 20,641.90 Ps. by fabricating the said books and/or by adopting the following modus operandi.

- | | |
|---|---------------|
| (A) by way of making superfluous entries (Details as per Annexure 'A') to the chargesheet | Rs. 12,241.40 |
| (B) by way of fraudulently placing the figure '1' before the sum total of postage in the postage & other related books and carrying over in the main postage Book. (Details as per Annexure 'B') to the chargesheet | Rs. 200.00 |
| (C) by way of deliberately reducing daily balances. (Details as per Annexure 'C') to the chargesheet. | Rs. 6,410.00 |
| (D) by way of deliberate mistake in totals/net results. (Details as per Annexure 'D') to the chargesheet | Rs. 10.50 |
| (E) by tearing out the pages of registers. (Details as per Annexure 'E') to the chargesheet | Rs. 1,780.00 |

Rs. 20,641.90

Thus it is alleged against the II party that he has misappropriated amount of Rs. 20,641.90 Ps. and defrauded the bank. It is alleged that II party has not closed the postage account properly and correctly as at the end of year 1985 following irregularities were observed.

"The balance of postage as on 24-12-85 was Rs. 1,286. However, you have credited to charges Account Rs. 1,386 being the balance of postages. The difference of Rs. 100 has been adjusted by taking advance for the same amount as on 1-1-1986. This means advance has not been accounted for in 1986. (9/92 Register)"

Thus it is alleged that II party has neglected the bank work entrusted to him. It is further alleged that II party was unauthorisedly absent from duty from 19-10-87 to 7-12-87. During that period he had submitted 5 leave applications. Branch Manager has advised him on 3 occasions that leave on medical grounds can not be granted and further advised him to report for duty immediately. The details of such occasions are narrated as below :

| Sr. No. | Date of application | Duration & No. of days | Branch Managers Memo. |
|---------|---------------------|--|-------------------------|
| 1. | 19-10-1987 | 19th Oct. 1987 to 21st Oct. 1987; 3 days. | — |
| 2. | 24-10-1987 | 24th Oct. 1987 to 31st Oct. 1987; 8 days. | Memo No. 48 dt. 4-11-87 |
| 3. | 02-11-1987 | 2nd Nov. 1987 to 11th Nov. 1987; 10 days | c/110 dated 12-11-87 |
| 4. | 13-11-1987 | 12th Nov. 1987 to 28th Nov. 1987; 17 days (with medical certificate) | — |
| 5. | 29/30-11-1987 | 29th Nov. 1987 to 8th Dec. 1987; 10 days. | Memo No. 60 dt. 3-12-87 |

It is further stated in the chargesheet that the II party neither replied the notices nor joined the duties and that superior's legitimate orders have been disregarded by him.

16. Charge sheet was replied on 20-8-88 and a show cause notice of dismissal was issued on 24-8-88 which was replied by II party on 24-1-89 and thereafter services of the II party came to be dismissed by an order dated 7-2-89. The II party had filed an appeal on 15-2-89. However, said appeal came to be dismissed. The II party, had filed a complaint through Govt. Labour Officer in 1990 and thereafter the reference is made to this court for adjudication of the dispute between the parties. As per Award Part I delivered by learned predecessor on 26-9-2000 it is declared that the

enquiry conducted against the II party by the I party is not fair, proper being violative of principles of natural justice and that has been vitiated. The I party was given opportunity to prove charges before the court. Since the enquiry conducted against the II party workman is vitiated the evidence recorded in the enquiry cannot be used for proving alleged misconduct. Accordingly I party has adduced evidence before the Court by examining witnesses namely : (1) Subhash Bhumayya Pamul at Exh. C-24, (2) Shri M. V. Kher at Exh. C-128 and (3) Mr. Sadanand Joshi at Exh. C-131. Departmental enquiry proceeding is filed with list Exh. C-9 in a separate file comprising of page no. 1 to 84. Copy of letters dated 20-8-88 and 15-2-1989 of II party addressed to I party are filed with list Exh. C-14. The I party has also produced original 9 registers with list Exh. C-25 and they are :—

| Sr. No. | Particulars | Date |
|---------|---|---------------------|
| 1. | Postage register no. 8 page no. 1 to 150. | 28-1-86 to 14-5-86 |
| 2. | Postage register no. 7 page no. 1 to 150. | 15-5-89 to 14-8-86 |
| 3. | Postage register no. 6 page no. 1 to 150 | 1-8-86 to 19-11-86 |
| 4. | Postage register no. 4 page no. 1 to 150 | 21-11-86 to 5-3-87 |
| 5. | Postage register no. 3 page no. 1 to 150 | 5-3-87 to 24-6-87 |
| 6. | Postage register no. 2 page no. 1 to 150 | 24-6-87 to 26-8-87 |
| 7. | Postage register no. 1 page no. 1 to 150 | 17-7-87 to 13-10-87 |
| 8. | Postage register no. A-1 page no. 1 to 93 | 16-2-87 to 10-5-87 |
| 9. | Postage register no. A-13 page no. 1 to 111 S. B. I. register | 8-1-87 to 22-4-87 |

The I party has also filed 3 original registers with list Exh. C-95A and they are :—

| Sr. No. | Particulars | Date |
|---------|---|---------------------|
| 1. | Postage register No-9 page No. 1 to 150. | 30-10-85 to 27-1-86 |
| 2. | Postage register A-7 (SBI) page No. 1 to 111. | 18-8-86 to 22-10-86 |
| 3. | Postage register A-11 other page No. 1 to 111. | 11-8-86 to 13-2-87 |

The I party has also produced original service record of Shri P. V. Mane i.e. II party workman with list

Exh. C-195-A. The Inspection report (duplicate) dated 18-11-87 of Shri S. N. Joshi is filed with list Exh. C-127. Said report is at exh. C-131A.

17. Whereas II party had adduced oral evidence at Exh. U-14 and produced chargesheet dated 25-8-88 issued to another workman Shri A. V. Deshpande with list exh. U-7 and copy of the demand notice dated 2-6-94 with list Exh. U-15.

18. Witnesses are examined and cross examined at length and the dispute involved in the case is being adjudicated on the basis of testified oral and documentary evidence of both sides.

19. As stated above the enquiry conducted by the I party is vitiated and therefore burden of proving the misconduct against the II party is on the I party. Therefore according to the evidence of I party witness Shri Subhash Bhumayya Pamul at Exh. C-24 it has come on record that he was working at Balives Branch of the I party from May 1985 to September 1987 as an accountant in the account division wherein about 35 to 40 employees were working and functioning of the postage was under the control of said division. During the period of this witness II party was looking after the work of postage. Witness knew the II party and he is also aware about the nature of work of postage. Witness is also aware about the facts of the case. Witness has stated that for the purpose of postage there are separate registers meant for register post, regional post and the registers for the purpose of Head office. The concerned clerk is having right to take a cash of Rs. 1,000 daily. The concerned clerk looking after postage work is required to enter daily postage in the concerned register i.e. to say R. P. A. D. and Head office register. He is required to carry forward the total in the registers. The witness being an accountant used to pass Vouchers prepared by the concerned clerk. This witness has specifically stated that II party has misappropriated amount of Rs. 20,641.90 Ps. It is explained that by making certain bogus entries the II party misappropriated amount of Rs. 12,241.90 and an amount of Rs. 6410 by carry forwarding the amount and the amount of Rs. 210.50 Ps. by doing calculations and Rs. 1780 by tearing some pages.

20. Witness has pointed out the amount misappropriated on particular date after going through the registers. It is pointed out that on 17-2-86 the II party has made superfluous entry of Rs. 82 against the title below 500. The witness has identified that the hand writing in the register is of II party. Zerox copy of page no. 38 is produced in support of his deposition. It is a zerox copy of page no. 38 attested by the Branch Manager. His signature is identified by this witness. It is claimed that there is no separate account total below 500. The ordinary register is also known as below 500 register. Page no. 38 of register No. 8 which is appearing at Sr. No. 1 is at Exh. C-26. Entries

at page no. 17 made on 28-6-86 reflect that amount of Rs. 151-10 is misappropriated. It is titled as ordinary S. B. I. Said entry is in the hand writing of II party. Witness has identified his hand writing. Page No. 17 of register no. 7 is at exh. C-27. It is appearing at Sr. No. 2. Witness has pointed out date-wise amount of misappropriation such as on 30-8-86 entry appearing on page no. 35 of book no. 36 reflect the amount of Rs. 3,000. It is titled as S. B. I. ordinary. It is identified that the hand-writing is of the II party. Page no. 25 of register no. 6 is at Exh. C-28. Page No. 44 of register no. 6 which is marked Exh. C-29 reflects that amount of Rs. 220 titled as S. B. I. ordinary is in the hand-writing of II party. The witness has further identified that the hand-writing of II party on page no. 49 of register no. 6 which is at Exh. C-30 is appearing to be entry for the sum of Rs. 157. On 11-9-86 entry made on page no. 52 for the sum of Rs. 102 is titled as other ordinary and i.e. in the hand-writing of II party as identified by the witness. Page No. 52 of register no. 6 is at Exh. C-31. Entry made on page no. 66 on 23-9-86 is appearing for the sum of Rs. 110 titled as others in the hand-writing of II party. Page no. 66 of register no. 6 is marked Exh. C-32. Entry on page no. 80 made on 3-10-86 is appearing for sum of Rs. 155 titled as other ordinary in the hand-writing of II party which is identified by the witness. Page no. 66 at exh. C-33 is an entry made on 15-10-86 on page no. 99 for sum of Rs. 155 and it is titled as other register. Said entry is in the hand-writing of II party and that is identified by the witness. Exh. C-34 is page no. 99 of abovesaid register. On 17-10-86 the II party had made an entry on page no. 101 for the sum of Rs. 110 and 5 Ps. It is titled as other register. The hand-writing of II party on document exh. C-35 (page no. 101 of said register) is identified by the witness. On 22-10-86 II party had made an entry on page no. 109 at Exh. C-36. Said entry is for the sum of Rs. 140 titled as other. The hand-writing of the II party at Exh. C-36 is identified by this witness. The witness has further pointed out that on 28-10-86 the II party had made an entry on page no. 116 (Exh. C-37) for the sum of Rs. 140. It is titled as other in the hand-writing of II party. Page no. 142 of the register marked as Exh. C-39 reflects that II party had made an entry for the sum of Rs. 120 and titled as other. It is in hand-writing of II party. The hand-writing of the II party is identified by the witness. On 18-11-86 the II party had made entry on page no. 146 for the sum of Rs. 120 titled as other. The hand-writing of II party on page no. 146 (Exh. C-40) is identified by the witness. The II party had made an entry on page no. 148 (C-41) for the sum of Rs. 90 and titled it as other. The hand-writing of the II party is identified by this witness. The witness had further pointed out that on 24-11-86 the II party has made an entry on page no. 4 (C-42) for the sum of Rs. 90 titled as other. The hand-writing of the II party is identified by this witness. On 25-11-86 II party had made an entry on page no. 4 for the sum of Rs. 110 and titled it as others. Hand-writing of the II party on page no. 4 (C-42) is identified by this witness. On 1-12-86 II party had made an entry on

page no. 12 for the sum of Rs. 110 and titled it as others. Page no. 12 of the register no. 4 is marked at Exh. C-43 as the hand-writing of the II party is identified by the witness. On 9-12-86 entry is made on page no. 26 for the sum of Rs. 120 which is titled as other. The Witness has identified that this entry is in the hand-writing of II party. Said document is at Exh. C-44. It is on page no. 26 of this register. On 11-12-86 entry is made on page no. 28 for the sum of Rs. 110. It is titled as other. This entry on page no. 28 (C-44) is identified to be in the hand-writing of II party. On 18-12-86 entry is made on page no. 39 (C-46) and that is pertaining to the sum of Rs. 120. The entry is identified to be in the hand-writing of II party. On 24-12-86 entry is made on page no. 50 (C-47) of the register for the sum of Rs. 112 and titled it as others in the hand-writing of II party. Page no. 51 of document Exh. C-48 reflects an entry for the sum of Rs. 106 titled as others and it is proved to be in the hand-writing of II party. On 9-1-87 entry is made on page no. 68 (C-49) of the register reflecting an entry for the sum of Rs. 140 titled as other. It is proved to be in the hand-writing of II party. Entry made on 10-1-87 of page no. 70 (C-50) of the register reflects that it was made in hand-writing of II party for the sum of Rs. 120 titled as others. On 14-1-87 entry is made on page no. 77 (C-51) which reflects that it is made for sum of Rs. 120. It is titled as others. It is also proved to be in the hand-writing of II party. Page No. 94 of the register (Exh. C-52) which reflects an entry for the sum of Rs. 160 titled as others. It is also proved to be in the hand-writing of II party. Page no. 94 of the register carrying Exh. C-53 is an entry for the sum of Rs. 160 titled as others. It is proved to be in the hand-writing of II party. On 31-1-87 an entry is made on page no. 98 for the sum of Rs. 150 titled as others. It is the Exh. C-54 on page no. 99 and that is proved to be in the hand-writing of II party. On 2-2-87 entry is made on page no. 101 (C-55) it is for the sum of Rs. 120 titled as others. It is proved to be in the hand-writing of II party. Page no. 104 of the register carry Exh. C-56 which reflects an entry for the sum of Rs. 160 titled as other in the hand-writing of II party. On 4-2-87 entry is made on page no. 105 of the register which carry Exh. C-57 reflecting an entry for the sum of Rs. 150 titled as other in the hand-writing of II party. Witness has identified hand-writing of II party. It is further revealed that on page no. 107 an entry is made on 5-2-87 for the sum of Rs. 140 titled as others and the witness had identified hand-writing is that of II party. This entry is at Exh. C-58 on page no. 107 of this register. On page no. 110 entry is made on 7-2-87 for the sum of Rs. 150 and that is titled as others in the hand-writing of II party as pointed out and identified by the witness. It is on page no. 110 at Exh. C-59. Page no. 121 of the register is marked exh. C-60 which reflects an entry for the sum of Rs. 150 titled as others and that is in the hand-writing of II party as identified by the witness. On 14-2-87 entry is made on page no. 122 (C-61) which reflects an entry for the sum of Rs. 140 titled as others and it is also identified to be in the hand writing of II party. On page no. 127 (C-62) an entry

is made for the sum of Rs. 127 titled as S. B. I. and it is proved to be in the hand-writing of II party. The S. B. I. register reflects as rightly pointed out by the witness that the figure 70-80 appearing on page no. 45 dated 17-2-87 is shown as 170-180 while carry forwarding said figure. Further more to summarise the amount misappropriated by the II party as pointed out by the witness is tabularised as following :

| Page No. | Regis-ter No. | Date | Amount | Exh. No. |
|----------|---------------|---------|-----------------------|----------|
| 132 | 4 | 21-2-87 | 150 | C-63 |
| 135 | 4 | 23-2-87 | 151 | C-64 |
| 137 | 4 | 24-2-87 | 141 | C-65 |
| 143 | 4 | 28-2-87 | 160 | C-66 |
| 145 | 4 | 2-3-87 | 140 | C-67 |
| 147 | 4 | 3-3-87 | 141 | C-68 |
| 6 | 3 | 9-3-87 | 121 | C-69 |
| 23 | 3 | 20-3-87 | 161 SBI 140 others | C-70 |
| 32 | 3 | 26-3-87 | 154 | C-71 |
| 33 | 3 | 27-3-87 | 120 | C-72 |
| 34 | 3 | 28-3-87 | 144 | C-73 |
| 37 | 3 | 1-4-87 | 142 | C-74 |
| 42 | 3 | 3-4-87 | 141 | C-75 |
| 43 | 3 | 4-4-87 | 144 | C-76 |
| 47 | 3 | 7-4-87 | 148 | C-77 |
| 49 | 3 | 8-4-87 | 148 | C-78 |
| 53 | 3 | 10-4-87 | 148 | C-79 |
| 55 | 3 | 15-4-87 | 150 | C-80 |
| 57 | 3 | 16-4-87 | 150 | C-81 |
| 58 | 3 | 18-4-87 | 148 | C-82 |
| 61 | 3 | 21-4-87 | 155 | C-83 |
| 63 | 3 | 22-4-87 | 150 | C-84 |
| 67 | 3 | 24-4-87 | 155 | C-85 |
| 68 | 3 | 25-4-87 | 115 | C-86 |
| 72 | 3 | 28-4-87 | 155 | C-87 |
| 74 | 3 | 25-4-87 | 120 | C-88 |

| Page No. | Regis-ter No. | Date | Amount | Exh. No. |
|----------|---------------|---------|----------------------------|----------|
| 81 | 3 | 6-5-87 | 120 | C-89 |
| 133 | 3 | 16-6-87 | 160 | C-90 |
| 135 | 3 | 17-6-87 | 150 | C-91 |
| 138 | 3 | 18-6-87 | 130 | C-92 |
| 145 | 3 | 22-6-87 | 120 | C-93 |
| 1 | 2 | 14-6-87 | 110 | C-94 |
| 8 | 2 | 27-6-87 | 140 | C-95 |
| 11 | 2 | 29-6-87 | 135 SBI | C-96 |
| 31 | 2 | 8-7-87 | 140 | C-97 |
| 34 | 2 | 9-7-87 | 160 others | C-98 |
| 39 | 2 | 10-7-87 | 140 | C-99 |
| 39 | 2 | 10-7-87 | 49.60 VPR | |
| 41 | 2 | 11-7-87 | 140 others 25 R. Parcel | C-100 |
| 41 | 2 | 23-7-87 | 12.50 R. Parcel | C-101 |
| 105 | 2 | 7-8-87 | 29.40 ordinary | C-102 |
| | 2 | 7-8-87 | 500 | |
| 24 | 1 | 29-8-87 | 140 ordinary | C-103 |
| 46 | 1 | 29-8-87 | 160 ordinary | C-104 |
| 49 | 1 | 11-9-87 | 14 | C-105 |
| 51 | 1 | 12-9-87 | 120 others 6.50 VPR | C-106 |
| 57 | 1 | 15-9-87 | 145 Ord. | C-107 |
| 58 | 1 | 16-9-87 | 158 Ord. | C-108 |
| 62 | 1 | 17-9-87 | 140 Ord. | C-109 |
| 68 | 1 | 19-9-87 | 114 Ord. | C-110 |
| 72 | 1 | 21-9-87 | 140 | C-111 |
| 77 | 1 | 22-9-87 | 140 | C-112 |
| 106 | 1 | 5-10-87 | 145 200 Diff. | C-113 |
| 109 | 1 | 6-10-87 | 29 Ord. | C-114 |

| Page No. | Regis-ter No. | Date | Amount | Exh. No. |
|----------|---------------|----------|-----------------------|----------|
| 123 | 1 | 12-10-87 | 140 | C-115 |
| 74 | 3 | 29-4-87 | 1000 Diff. | C-88 |
| 22 | 2 | 4-7-87 | 10 Ord. Total 1000 | C-116 |
| 51 | 2 | 15-7-87 | 500 Diff. | C-117 |
| 75 | 2 | 24-7-87 | 500 Diff. | C-118 |
| 85 | 2 | 29-7-87 | 500 Diff. | C-119 |
| 121 | 2 | 13-8-87 | 500 Diff. | C-120 |
| 138 | 2 | 20-8-87 | 800 Diff. | C-121 |
| 148 | 2 | 24-8-87 | 800 Diff. | C-122 |

21. Witness Shri Pamul has further stated that on 1-1-86 he had passed a Voucher for the sum of Rs. 2,000 for advance against postage and the same was collected by the II party. The contents of said Voucher are contended to be true and that is appearing at Sr. No. 8 of Exh. C-95A. On 25-6-87 he has passed Voucher for sum of Rs. 2000. The witness has identified his signature on the Voucher and the signature of the II party, having made in token of amount collected by the II party. The same is appearing at Sr. No. 7 of C. 95A. On 4-4-87 witness had passed voucher for the sum of Rs. 2,000. The voucher, signature of the witness and signature of II party on the reverse side of the document are identified by the witness.

22. Abovesaid evidence of the witness Shri Pamul is not refuted. In cross-examination material suggestions are denied by the witness and the some of the admissions given by the witness are of no substantiate gain to the II party.

23. Considering testified evidence of abovesaid witness Shri Pamul it is revealed that as pointed out by the witness the amount of misappropriation comes to Rs. 20641.90.

24. Another witness Shri Mukund Vishnu Kher examined at exh. C-128 deposed that he is in the employment of the I party for last about 25 years. During the tenure of employment he has worked on various posts. At present he is working at Regional Office, Pune as a Manager Staff Cell since 1-4-2001. There are 5 regions to the Zonal office and the witness is looking after the work of region which contains Solapur and Satara Districts. Witness is required to perform the work of maintaining record of staff, transfers, promotions and disciplinary actions. The record in respect of II party is maintained and that is under the control and custody of this witness. The witness Shri Kher has stated that one Shri S. N. Joshi, Jr. Officer of the Bank was appointed

to investigate the fraud and said Mr. Joshi has investigated into the matter and submitted his report in duplicate. The I party has produced carbon copy of said report which is bearing the initials of Shri Joshi on each page. Learned advocate Shri G. R. Joshi for the II party has objected that original report is not produced and therefore this secondary evidence in the nature of carbon copy of said report should not be given any evidential value. However, witness Shri Kher has clearly stated that the original copy of the report is not traceable and therefore carbon copy is produced. As per Law of Evidence it is well settled that as far as possible party should produce primary evidence. However, if primary evidence is not available or it is not traceable or otherwise cannot be produced for want of other justified reasons then secondary evidence is admissible and therefore abovesaid objection of Shri Joshi (Advocate) is not sustainable. Any how this witness is examined only to identify the signature of Mr. Joshi, the Investigator and Author of the report. Abovesaid evidence of Mr. Kher reflects that the investigation was done by Mr. Joshi and that he had submitted a report. Witness Shri Sadanand Narayan Joshi was in the employment of the I party during the period from 1961 to 1998 and at Pune Region Office from 1986 to 1989. He is examined at Exh. C-131. Testified evidence of this witness reflects that he was directed to investigate the matter of fraud at Balives Branch, Solapur. Alleged fraud was in respect of postage. Witness investigated into the matter from 2-11-1987 and submitted report on 18-11-87. He was directed to investigate on the basis of report of Internal Auditor. He checked and verified 5 registers concerning postage. Said registers are known as original register, S.B.I., other and 2 other registers. He checked the summaries of all registers and came to know that summaries appearing in the registers are in the handwriting of II party. The Head Clerk has occasionally verified said registers and signatures to that effect were appearing. The Head Clerk informed the witness that he has not done physical verification. However, he believed II party and signed the registers. The witness explained that after verification he observed fraud of Rs. 20,783.50 Ps. He has also explained that the fraud appearing in the registers in the form of nature of superfluous entries by reducing balance and by adding one to the total figure. He had done the work of cross tallying regarding the fraudulent accounts. While cross checking he had taken into consideration period from Dec. 85 to Oct. 1987. The amount of fraudulent postage appears on consideration of total amount drawn by way of advance for postages, actual postage incurred during the said period and at the year returning the unspent balance. Witness has also stated that in his report he has prepared various monthwise Annexures with necessary details therein showing as to how the amount is appearing as fraud. Witness was confronted with the documents which is purporting to be a carbon copy produced on record at Exh. C-127 and he has stated that said report bears his

initials on each page and contents of his report are true and correct. He has verified that his report contains Annexure A to C and said Annexure are also bearing his initials. The report of the witness is marked as Exh. C-131A. During the cross-examination the witness has denied material suggestions. It is denied that report in question was prepared by him after the reference is referred for adjudication. It is fortified during his cross-examination that registers contains 2 types of handwriting out of which summary is in the handwriting of II party and he is not aware about other handwriting. However, entries appearing in other register from 12-2-87 to 10-9-87 are in the handwriting of II party. The witness has stated that he is able to identify and state the handwriting of II party only and that he is not in a position to identify the handwriting of other employees as he had no occasion to come across to handwriting of any other employees at Balives Branch at Solapur even subsequent to submission of his report. The witness has also stated that he has identified the handwriting of the II party on the basis of summary written by him. The Head Clerk informed witness about the handwriting of II party appearing at Summary. Same was supported by Branch Manager and Accountant. The witness had rightly stated that he had no other source or procedure for verifying or identification of handwriting of II party except that of oral statement of Head Clerk, Accountant and Branch Manager. The witness has also denied the suggestion that the handwriting appearing at the summary is not of second party. It is an admitted fact that the registers produced in the Court do not contain two registers of below 500 and Insurance, Parcel, V.P.P. and foreign register. The witness has, however, mentioned in his summary that said 2 registers below 500 and other have also been referred. Witness has also denied the suggestion that his report is not on the basis of factual aspects and that II party was issued chargesheet and the action is taken against him only with a view to protect Mr. A. V. Deshpande, Head Clerk. In this way all material suggestions are denied and few admissions by the witness are of no use for demolishing the case and the evidence of the I party. Thus, testified evidence of witness Shri S.N. Joshi reflects that on the basis of report of Internal Auditor, he was directed to investigate into the matter and as such he has investigated into the matter and observed the fraud of Rs. 20783.50 ps. The contents of the report comprising of Annexure A to C are proved. The oral evidence of the witness Shri Pamul at Exh. C-24, and evidence of witnesses at Exh. C-128 and C-131 is supported by original documents in the nature of registers maintained by I party's department during the normal course of working hours. It is also submitted at Exh. C-131A with list Exh. C-127.

25. The report Exh. C-131A reflects that as per instructions of the I party the witness Shri S.N. Joshi had visited the Balives Branch at Solapur on 22-11-87 for investigation into the matter of suspected fraud in postages

committed by Shri P.V. Mane II party cashier-cum-clerk working on postage desk at the Branch. Report reflects that "Ordinary letter register" is used for recording the transactions and the dispatch of ordinary letter sent and summary of days transaction of postages from other postage registers and maintenance of daily balance. "SBI register letters" is the register used for recording the despatch and transaction such as register letters sent to office of S.B.I. The register named as "other register letters" is the register used for recording dispatch/transaction such as register letters sent to the parties other than S.B.I. office and the register known as "Instrument below 500" is maintained for recording dispatch and pertaining to all instruments below 500 sent by ordinary dak and the register titled as V.P.P./insurance/foreign letters register is used for recording dispatch and transaction of V.P.P., foreign letters, Air Mail, Insurance letter etc. Witness Shri Joshi had checked the summary of postage for the period from 23-12-85 to 13-10-87 during which period II party Shri P. V. Mane was working on dispatch desk. Annexure D filed with the report is a detail monthwise statement indicating daily expenditure on postage as recorded in the summary register, superfluous entries made, other errors, actual postage incurred, advance taken, day's closing balance as recorded in the register and the difference, if any, in the closing balance etc. together with a summary (Annexure 'C') of all the months during the period from 23-12-85 to 13-10-87 are enclosed which focus on a net fraud of Rs. 20,783.50. It is more than defrauded amount alleged in the chargesheet. The break-up of which is as mentioned in Annexure 'B' as under :

| | |
|--|---------------|
| (i) By way of adding superfluous entries | Rs. 12,290.80 |
| (ii) By way of fraudulently reducing balances | Rs. 8,185.70 |
| (iii) By way of placing the figure 1 before the sum total in the register while carrying over to summary | Rs. 200.00 |
| (iv) By way of carry over/total mistakes. | Rs. 107.00 |
| Net result of fraud | Rs. 20,783.50 |

Mr. Joshi's report also reflect on the modus operandi of the II party such as :

- (a) Making superfluous entries within a range of Rs. 82.00 to Rs. 300 in the days summary. The

following two extracts from the summary register will elaborate the position :

| | Entries appearing in the register Rs. | Correct position Rs. |
|----------------------------|--|----------------------------|
| (i) Date 14-2-1987 | | |
| Total of ordinary register | 28.95 | 28.95 |
| SBI Regd. letters | 166.90 | 166.90 |
| Regional Office letters | 8.50 | 8.50 |
| Other Regd. letters | 140.00* | Nil |
| Foreign letters | 6.50 | 6.50 |
| Total | 350.85 | 210.85 |
| *Superfluous entry | | |
| (ii) Date 10-4-1987 | | |
| Total of ordinary register | 68.20 | 68.20 |
| SBI Regd. letters | 208.70 | 208.70 |
| Other Regd. letters | 148.00** | Nil |
| Instruments below 500/- | 6.60 | 8.60 |
| Regional office letters | 12.50 | 12.50 |
| Total | 446.00 | 298.00 |

**Superfluous entry

In the abovesaid extract the entry of Rs. 148.00 against other register letters is a superfluous entry. Another model of modus operandi pointed out in the report of Mr. Joshi is that at some places the amount of postages incurred on registered letters sent to the officers of SBI and other parties are clubbed and shown as one entry in the summary against either SBI Regd. letters or other Regd. letters and then showing it as against one of these registers as a superfluous entry made within a range of Rs. 90 to Rs. 170.

| | Entries appearing in the registers Rs. | Correct position Rs. | |
|----------------------------|--|----------------------------|---------------------|
| (i) Date 23-2-1987 | | | |
| Total of ordinary register | 75.60 | 75.60 | Clubbed together |
| SBI Regd. letters | 135.80* | 87.00 | & shown against SBI |
| Other Regd. letters | 151.00** | 48.80 | Regd. letters |
| Foreign letters | 24.90 | 24.90 | |
| Instruments below 500 | 2.00 | 2.00 | |
| Total | 389.30 | 238.30 | |

*clubbing of entries

**Superfluous entry

It is rightly pointed out that amount of Rs. 135.80 is by way of clubbing of 2 different amount Rs. 87 + 48.80 and they shown SBI register letters and the amount of Rs. 151.00 shown against other register letters is by way of Superfluous entry.

| | Entries appearing in the registers Rs. | Correct position Rs. | |
|----------------------------|--|----------------------------|---------------------|
| (ii) Date 8-4-1987 | | | |
| Total of ordinary register | 75.20 | 75.20 | Clubbed together |
| SBI Regd. letters | 183.20* | 138.40 | & shown against SBI |
| Other Regd. letters | 148.00** | 44.80 | Regd. letters |
| Instruments below 500 | 7.20 | 7.20 | |
| Regional office letters | 8.50 | 8.50 | |
| Total | 422.10 | 274.10 | |

*clubbing of entries

**Superfluous entry

It is rightly pointed out that amount of Rs. 183.20 mentioned in this extract is clubbing of 180.40 + 44.80 and the same is shown against SBI Register letters whereas the entry of amount of Rs. 148.00 shown against other register letters is by way of Superfluous entry.

Next modus operandi adopted by the II party is by way of reducing closing balance in the register. Following examples are supporting the contentions of learned Advocate for the I party.

| Dates | Rs. | Rs. | Rs. | Rs. | Rs. |
|---------|---------|--------|---------|---------|-------|
| 29-4-87 | 1843.50 | 390.70 | 1452.80 | 452.80 | 1,000 |
| 4-7-87 | 2013.15 | 221.40 | 1791.75 | 791.75 | 1,000 |
| 15-7-87 | 1714.45 | 419.80 | 1294.65 | 794.65 | 500 |
| 20-8-87 | 2385.50 | 348.70 | 2036.80 | 1236.80 | 800 |

Next type of fraud is due to carry over in summary the sum total of actual expenditure from supplementary register by placing figure 1 before the total e.g. on 27-7-1987 daily total of Rs. 48.40 in other register has been carried over as Rs. 148.40 in the summary of that day. Second instance is on 17-2-1987 where a sum total of Rs. 70.80 in SBI register has been carried over as Rs. 170.80 as rightly stated by witness at Exh. C-24 in his evidence. Moreover there are certain mistakes involving small

amounts, committed while writing the days summary such as :

- (i) Total mistake in summary
- (ii) Inversion of figures in carry over of the totals from other registers to the summary.
- (iii) Wrong carry overs of totals from the other registers to summary.
- (iv) Mistake of Rs. 100 in crediting unsent balance to charges account (credited excess) etc.

26. Learned advocate for the I party has rightly pointed out that these mistakes are on higher (+) or lower (−) side. The net difference of these mistakes is Rs. 107 as shown in column 4 of summary of monthwise statements filed with the report of Mr. Joshi. All the superfluous entries, wrong carry over and reduction in balance are apparently a creation of Shri P. V. Mane, a cashier-cum-clerk.

27. Witness Shri Joshi has admitted in his cross examination that he is not in a position to tell as to whether entries appearing on the torn pages were appearing in some other registers and that he is not in a position to tell as to how he constructed the amount of torn pages total amount Rs. 1780. However, this is a matter of calculation and the reasons for the calculations are reflecting in the report of Mr. Joshi stating that few pages of the books were observed to be torn out/missing and therefore the quantum of postage in ordinary register in which summary has been taken has to be reconstructed on an approximate basis having regard to the lines of pages missing average postages and subsequent closing balances. The details of pages missing are as under :

| Register | Date | Pages missing |
|--|-----------------------|--|
| Ordinary letters Register where summary is taken | 3rd and 4th June 1987 | Page no. 110 to 113 |
| do | 19th June 87 | Page no. 140 & 141 |
| do | 2nd Sept. 87 | Page no. 32 & 33 |
| do | 23rd Sept. 87 | Page no. 80 & 81 |
| SBI regd. letters register | 3rd to 5th Jan. 1987 | Page no. 91 one part 92 both parts 93 one part |

It follows that the amount of Rs. 1780 calculated against pages missing from the registers is an approximate amount but the fact remains that the amount more or less than the amount of Rs. 1780 has been defrauded.

The details of reconstruction of the quantum of ordinary postages are shown in Annexure 'A' of the report

Mr. Joshi. The summarised position of the amount embezzled is as under :

| Date | Amount embezzled |
|----------------------|------------------|
| 3rd & 4th June, 1987 | Nil |
| 19th June, 1987 | Rs. 180 |
| 2nd Sept., 1987 | Rs. 1,000 |
| 23rd Sept., 1987 | Rs. 600 |
| 3rd to 5th June 1987 | Nil* |

It is an admitted fact that no one has seen the person tearing pages from the registers, however, these registers are the matter of concern with the II party and in view of abovesaid facts and circumstances it is probable that pages are torn to hide the amount embezzled and that reflects the intention of the wrong-doer. In view of rest of the allegations of fraud being proved against the II party the I party has rightly set the figures towards II party. The contention of learned Advocate for II party is that all these registers were verified to be true and correctly recorded. However, the totality of the evidence reflects that the Head Clerk Shri Deshpande used to check the register and to make his initials thereafter. However, it was not his duty to do so even then he has made the same through random checking. There was no absolute control over the work of II party. The report reflects that entries were verified by Mr. A. V. Deshpande Head Clerk on 17 occasions during the period from 3rd October 1986 to 11 September 1987 and said registers were verified by Mr. A. D. Kulkarni, Manager (Accounts) only on two occasions i.e., on 28th Jan. 87 and 18th June 1987. All this goes to show that there was no daily and routine check over the registers and the checking on certain occasions was just by way of formality that is why Shri A. V. Deshpande was chargesheeted for gross negligence and punished after enquiry. Contention of learned Advocate for the II party is that the chargesheet issued to the II party and Mr. Deshpande were substantially the same in respect of same instance. It is true that Mr. A. V. Deshpande was also issued a chargesheet, however, nature of charges against Shri A. V. Deshpande is entirely different inasmuch as Shri Deshpande was charged for gross negligence whereas the charges against the II party are regarding a fraud and absenteeism. Thus chargesheet issued to the II party and the chargesheet issued to Shri A. V. Deshpande are distinctively different. Next contention of learned Advocate for II party is that Shri Deshpande was awarded punishment of stoppage of increment whereas Shri P. V. Mane II party awarded punishment of dismissal and therefore he has been victimised by way of discrimination. This line of argument is of no assistance to the case of II party because the charges were different. Secondly Shri A. V. Deshpande is

checking the entries in the register has given scope for defrauding the amount. It is further contended that there were 2 ladies even then H party was not held guilty for misappropriation of the amount. It is well stated that "An Auditor is a watch dog and not a bloodhound" and accordingly auditor had pointed out the fraud and therefore (he matter was investigated by appointing Shri Joshi. Thus auditors have done their duty and the next call to be played was rightly left with the I party employee. The H party workman Shri P. V. Mani had drawn the charge leveller against him in the charge sheet. However, after considering oral and documentary evidence it is proved beyond doubt that the H party has defrauded the amount of Rs. 20,641.90 Rs. Denial of charge appears to be by way of after thought with intention to escape from the consequences. It is rightly pointed out by learned Advocate for the I party that H party Shri P. V. Mani had addressed letter dated 20-5-68 to Regional Manager, State Bank of India, Region IV, Pune. It was sent through the Branch Manager of State Bank of India, Solapur Branch, Solapur. This letter is written after receiving a charge sheet dated 20-7-68 stating that, before giving reply to the charge sheet H party sincerely appealed to the Authority to consider his family aspect and circumstances he had undergone. His mother was suffering from Cancer since 1961 till her death in the year 1968. For her survival need was to get regular continuous treatment and medicines, operation, chemotherapy and nursing inviting enormous expenditure disproportionate to his sources. The H party has further stated that he has to look after his younger brother who is mentally retarded and required to admit him into the medical treatment regularly. All this has resulted in coming funds from his friends and relatives as and when required in addition to exhausting his own savings. H party further submits that after death of his mother his friends and relatives were after him for the repayment of amount he has borrowed. But he failed to observe the commitments given to them. As a consequence they have developed distrust against him and started threatening of dire consequences if he would not repay the amount. The H party has further stated in the letter of appeal that during that period he was under duress, in a confused and imbalanced state of mind and was completely bewildered as to how money should be raised. Out of fear and with a view to settle the commitments without knowing the consequences he became the victim of financial distress, compelling him to involve himself in the illegal transaction as per Annexure one and para II of the charge sheet. He has further submitted that they are bonafide mistakes. Moreover his letter dated 15-2-69 appealed to the Deputy Manager, Appellate Authority, State Bank of India, Regional Office, Pune. H party workman Shri P. V. Mani has clearly stated that he had appealed to the Deputy Manager, Regional Office, Pune for suspension of the order of payment of the amount without notice; and that he has appealed for reconsideration of said order purely on humanitarian grounds. In para 3 of said appeal he has clearly stated that he has admitted the

28. Next contention of learned Advocate for the II party is that witness Shri Pamul who deposed in this proceeding was working as accountant at Balives Branch. Said Shri Pamul was no way concerned or connected with disputed action. It is further submitted that said Shri Pamul was neither supervising the dispatch section nor used to verify day-to-day registers and transactions thereof. Therefore his evidence should not be relied. However, this line of argument is not assisting the case of II party because entire evidence of Shri Pamul is based on the original registers and the office record maintained by the I party during the course of its business and the witness has pointed out the entries disclosing defrauded amounts from time to time. It is also contended by the II party that he was never asked or enquired with by Shri Deshpande Head Clerk about any difference in postage account or misappropriation. It is also case of the I-party that Shri Deshpande was negligent in checking the registers and he was charged, shot and punished. The negligence on the part of Deshpande or other officer in the matter of

charges against him and that he sincerely repent the lapses on his part. In the same para it is further stated that he has been promoted from subordinate cadre. He has no lit-vices. He has been a victim of pressing monetary requirements of his family. Thus the II party has clearly admitted the misconduct alleged in the chargesheet, but he has prayed for sympathetic view. In the premises in view of oral and documentary evidence, testified sure and reliable evidence, as well as on the basis of aforesaid admissions of the II party given in his letter of appeal addressed to Regional Manager. Before replying the chargesheet dated 20-7-88 and Post dismissal letter of Appeal dated 15-2-89 I hold and conclude that the allegations as to misappropriation narrated in Clause 'I' (A B C D E) regarding misappropriation of amount is proved. Similarly it is proved that II party had not closed the postage Account properly and correctly as on 24-12-1985 was Rs. 1,286.00. However, he had credited to charges Account Rs. 1,386.00 being the balance of postages. The difference of Rs. 100 was adjusted by taking advance for the same amount as on 1-1-86. This goes to establish that advances has not been accounted for in 1986. This has been supported by register no. 9/92.

29. As regards charge of absenteeism there is no iota of evidence. Therefore I hold and conclude that except the charge of absenteeism rest of the charges alleged in the chargesheet are proved. Hence I answer the issue no. 1 accordingly.

ISSUE No. 3.

30. In view of findings to issue no. 1 it is established that the II party Shri P. V. Mane has committed serious misconduct of misappropriation of the amount of I party. He has admitted that I party is a Bank and bank transactions are done on the basis of confidence. He has also admitted that in the year 1988 he was punished by way of stoppage of increment. The witness Shri S. N. Joshi has verified the service book of II party and stated that II party was punished by way of warning on one occasion. He was also awarded punishment of stoppage of one increment for 6 months.

31. Learned advocate for the II party has relied upon the Judgement of our High Court in a case of State Bank of India v/s. (1) P. D. Apshankar. (2) Abdul Hamid G. Gazekhan in Writ Petition No. 1317/89 wherein petitioner was nationalised Bank and second respondent was a clerical employee in its service. The enquiry officer found that the charge with regard to accepting VPP/MO No. 148 dated 28-3-81 without crediting the amount in the account of the Bank had been established. However, his past service record of 19 years was unblemished and therefore in exercise of powers of Section 11A of I. D. Act the order of dismissal against the Second respondent has been substituted by an order of reversion to a lower post and the second respondent has been totally denied the back-wages.

Hon'ble Lordship held that this does substantial justice to the parties. The learned advocate for the II party prayed for interference with the quantum of, punishment in view of abovesaid Judgement by exercising powers u/s. 11A of the I. D. Act. However, it is necessary that powers u/s. 11A should be judicially exercised. It depends upon the facts of the case. In a case before me II party workman has committed serious misconduct of misappropriation of amount of Bank which functions only on the basis of trust and confidence. The past service record of the II party was also not clean. Therefore benefit of abovesaid Judgement cannot be extended to his case.

32. Whereas learned advocate for the I party has relied upon following cases :

- (i) Learned advocate for the I party has relied upon the Judgement of Bombay High Court in a case of Sunil Devidas Damkondekar v/s. the Union of India and others, 2002(3)-MLR-941 wherein Hon'ble Lordships have held that quantum of punishment is a managerial decision. Looking at the seriousness of the charges, the Enquiry Officer has held that the petitioner had defrauded the Bank for an amount of Rs. 10,102 and it was not a case of human error or negligence alone. Both the Disciplinary Authority as well as the Appellate Authority have considered all the pleas of the petitioner and held that he was not fit to be retained in service. It is further held that this decision does not call for any interference at our hands while exercising our discretionary powers under article 226 of the Constitution.
- (ii) Breach Candy Hospital and Research Centre Mumbai V/s. Babulal B. Pardeshi and another reported in 2002(2)-Mh. L. J.-227, wherein it is held that question as to whether punishment which has been imposed is justified within the meaning of Sec. 11A must depend upon the facts and circumstances of each case. It is further held that the charge of misconduct in a disciplinary enquiry has to be established on a preponderance of probabilities and does not admit of the high standard of proof, a proof beyond reasonable doubt as would be required in the course of a criminal trial. A disciplinary enquiry is not subject to the observance of the strict rules of evidence which are required in the case of a criminal trial. It is further held that the Tribunal does not act as a court of Appeal to substitute its own Judgement with that of the Management. The Supreme Court held that the tribunal would interfere where (a) there is want of good faith; (b) there is victimisation or unfair labour practice; (c) when the management has been guilty of a basic error or violation of the principles of natural justice

and (d) when on the material before the court the finding is completely baseless or perverse. In the instant Judgement reference is taken of Supreme Court Ruling in case of Christian Medical College case wherein it is held that the power u/s. 11A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of the Management u/s. 11A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision.

- (iii) Board of Trustees of the Port of Mumbai V/s. Ramesh Rajaram Jadhav reported in 2001(2)-Mh.L.J.-899 wherein it is held that setting aside order of dismissal by the Industrial Tribunal was not justified when the dismissal was on the ground of proved misconduct.
- (iv) Hawaldar Singh V/s. M/s. Taigrania Metal and Steel Industries and other reported in 2000(2).L.J.-220 wherein workman was guilty of misconduct of abusing superiors and threatening to assault. He was dismissed after domestic enquiry. Challenge was negatived by Labour Court and Industrial Court and therefore Writ petition was dismissed.
- (v) Shashikant Bhagwant Kulkarni V/s. Indian Red Cross Society and another reported in 2000(1)-Mh.L.J.-page 625, wherein it is held that even if an order of termination is held to be illegal it is not that in every case reinstatement with full back wages as a normal rule should follow. There can be departure from this normal rule in exceptional circumstances.
- (vi) Ajaib Singh V/s. Sirhind Co-operative Marketing-cum-processing Service Society Ltd. Sirhind Mandi & another reported in 1999(1)-LLJ-109 wherein it is held that court can deny relief on the ground of laches.
- (vii) Radha D. Agarwal V/s. Union Bank of India and others reported in 2002(3)-Mh-L.J.-page 25 wherein it is held that doctrine of merger applicable to tribunals and authorities discharging quasi judicial functions. In the instant case review application was dismissed. It is held that order of appellate authority merger into the order of Reviewing Authority.
- (viii) I party has also relied upon the Award of All India Industrial Tribunal (Bank dispute) Bombay on the Industrial Disputes between certain Banking

companies and their workmen. Said Award is known as "Shastri Award" which has laid down procedure for taking disciplinary action. The acts and omissions are amounting to 'gross misconduct' as well as minor misconducts are enlisted in the said Award. In view of abovesaid Award misconduct proved against the II party workman is also under the category of gross misconduct.

33. Ratio and proposition of Law laid down in abovesaid Judgements are not in dispute and they are supporting to the case of I party. In a case before me it is proved that II party has misappropriated amount of I party bank to the tune of Rs. 20,641.90 Ps. It is also proved that the balance of postage as on 24-12-85 was Rs. 1286 but II party workman had not credited to charges account Rs. 1386 being the balance of postage. The difference of Rs. 100 had been adjusted by taking advance for the same account on 1-1-86. This has proved that the advance had not been accounted for in 1986. Thus II party workman has committed serious misconduct for which the standing Orders as per Sastri Award applicable to his case provide for punishment of dismissal. His past service record is also not clean and therefore punishment of dismissal awarded to II party is proportionate and commensurate with the nature of the guilt established upon proof of the misconduct alleged in the chargesheet. In the result exercise of power u/s. 11A is not at all warranted in the facts and circumstances of this case. This is not a fit case for interfering with the punishment of dismissal in view of the gross misconduct committed by II party workman. As such I am convinced to accept that exercise of powers u/s. 11A of the I. D. Act would only lead to interfering with the managerial function to the extent of destroying the discipline and conduct in the entire employment of the I party. Therefore I answer the issue no. 2 in the negative.

ISSUE NO. 4 :

34. In view of findings to issue no. 1 and 2 it is very much clear that II party workman failed to establish his entitlement for any relief and therefore issue no. 4 is answered in the negative.

35. After taking entire view of the case in the light of testified oral and documentary evidence and the legal position set out by abovesaid rulings I have answered the issues accordingly for the reasons elaborately stated therefor and proceed to pass the following award.

AWARD

I. Reference I. D. A. 20/98 is hereby dismissed and accordingly disposed off.

II. No order as to costs.

III. Award accordingly.

Dated : 10-11-2003.

K. B. WAGH, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2003

Dated. the 4th December 2003.

का. आ. 111.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर एंड जयपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद नं.-1 के पंचाट (संदर्भ संख्या 90 आफ 1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2003 को प्राप्त हुआ था।

[सं. एल. 12012/99/95-आई.आर. (बी.-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th December, 2003

S.O. 111.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (90 of 1996) of the Central Government Industrial/Labour Court, Dhanbad No-I now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workman, which was received by the Central Government on 17-12-2003.

[No. L-12012/99/95-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 90 of 1996

PARTIES:

Employers in relation to the management of State Bank of Bikaner and Jaipur.

AND

Their Workman.

PRESENT:

Shri B. Biswas, Presiding Officer.

APPEARANCES:

On behalf of the Management: Shri Hari Dasan, Law Officer.

On behalf of the Workman : Shri B. Prasad, Authorised Representative.

STATE Bihar

AWARD

By Order No. L-12012/99/95-IR (B-1) dated 23-8-96 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of State Bank of Bikaner and Jaipur, Patna in terminating the services of Sh. Naresh Rajak is legal and justified? If not to what relief the workman is entitled to?"

2. The case of the concerned workman, according to the written statement, submitted by him in brief, is as follows:

The concerned workman submitted that he was orally appointed as a temporary peon by the management of State Bank of Bikaner and Jaipur at Tekari Branch, Gaya w.e.f. 4-1-1998 and worked there upto 5-4-1992. He submitted that in course of discharging his duties from 10 A.M. to 6 P.M. he had to perform different duties, viz (i) taking out ledgers, registers from the Almirah and placing the same on the tables and counters; (ii) carrying out Daks through Dak Delivery Book and handing over to the customers; (iii) posting of mails to Post Office; (iv) stitching of vouchers; (v) serving water to the members of staff and customers and (vi) making entries in Pass Book and other sundry jobs. He submitted that he worked under the management continuously. He further submitted that initially the management paid him at the rate of Rs. 20 per day as his wages and subsequently it was enhanced to Rs. 25 per day from April, 1989 and the said payment was to be made through vouchers on weekly basis. He alleged that he was forced to take payment in different fictitious names like Sunil Prasad, Uma Shankar Prasad, Ajit Kumar, Anup Kumar, Vinod Kumar etc. by the Branch Manager. He disclosed that as there was a threat on the part of the management for his stopping from work he was compelled to sign on payment voucher in different names as he was a poor Harijan and had no alternative way to maintain his livelihood. He submitted that during the period of his service he discharged his duties to the best of his ability and with full satisfaction to his superior. He alleged that in spite of rendering services diligently the management suddenly stopped him from work w.e.f. 6-4-1992 which amounted to termination as per the provisions of Section 2(00) of the Industrial Disputes Act. He alleged further that before such termination the management neither issued any notice to him nor paid any compensation as per provisions laid down under Sec. 25-F of the Industrial Disputes Act, 1947. He disclosed that after his termination the management appointed Anirudh Singh Sharma as peon at Tekari Road,

Gaya Branch of the said Bank in violation of Section 77 & 78 of the Industrial Disputes (Central) Rules. He disclosed that after his termination he submitted representation to the higher authorities of the Bank for his reinstatement but to no effect and for which he raised an industrial dispute on 17-1-1994 before the Asst. Labour Commissioner (C), Patna for conciliation which ultimately resulted reference to this Tribunal for adjudication. The concerned workman accordingly submitted his prayer to pass an award directing the management to reinstate him in service with other relief.

3. The management, on the other hand, after filing written statement-cum-rejoinder have denied all the claims and allegations which the concerned workman asserted in his written statement. They submitted that the concerned workman was engaged for the job of purely temporary nature for shifting of articles and arranging them etc. and not against any regular vacancy of peon. Accordingly he is debarred from asserting any right for his regularisation in service. As per contract for which he was employed, the service contract came to an end automatically on the expiry of the stipulated period. In view of the facts and circumstances the management submitted that the claim of the concerned workman is frivolous and baseless. They disclosed that after expiry of the contract period automatic cessation of service does not constitute 'retrenchment' and is therefore, outside the purview of Chapter V-A of the Industrial Disputes Act. Such termination of service as a result of non-renewal of the contract has been excluded from the definition of Section 2(oo) (bb) of the I.D. Act. They submitted that no retrenchment is involved in the present case and no justifiable issue of claim has been agitated for adjudication before this Tribunal. They further submitted that during the period of contract service neither the concerned workman completed 240 days of work in a year nor he has completed continuous service within the meaning of Sec. 25-B of the Industrial Disputes Act, 1947 and for which he is not entitled to seek any relief. They submitted further that the provisions of Sec. 25-G and 25-H of the I.D. Act is the part of the Chapter relating to the 'retrenchment'. Before any relief under this chapter is sought, the incumbent has to prove that he is wrongly retrenched and is entitled to the relief and if he can establish so the provisions of Sec. 25-C and 25-H is attracted. In view of the facts and circumstances stated by the management they submitted that the concerned workman is not entitled to get any relief in view of his prayer and accordingly his prayer is liable to be rejected.

Points to be decided

4. "Whether the action of the management of State Bank of Bikaner and Jaipur, Patna in terminating the services of Sh. Naresh Rajak is legal and justified? If not, to what relief the workman is entitled to?"

Finding with reasons

5. It transpires from the record that the concerned workman in order to substantiate his claim examined two witnesses including himself, while the management also examined two witnesses as MW-1 and MW-2 in support of their claim. WW-2 who is the concerned workman during his evidence disclosed that he started working as Peon at State Bank of Bikaner and Jaipur at Gaya Branch with effect from 4-1-89. He submitted that he worked there till 5-4-1992 in the said capacity continuously. He submitted further that as part of his duty he used to bring out ledgers, Accounts books etc. from the almirah and used to keep the same on the table of clerks. He also used to serve drinking water to staff and also used to carry daks etc. His duty hours was from 10 a.m. to 6 p.m. This witness further disclosed that initially management used to pay him wages at the rate of Rs. 20 per day and thereafter it was enhanced to Rs. 25 per day. It is his allegation that though he put his attendance under the management for more than 240 days in a year with a view to discharge his duty as peon the management without giving any notice and also without paying him any compensation terminated him from his service. He further alleged that under coercion and threat of the Branch Manager he had to sign vouchers some times in his own name and sometimes in the name of Sunil Prasad, Ganesh Prasad, Ajit Kumar, Kuldip Kumar, Sohan Singh, Benoy Mohan etc. on the reverse side of the vouchers. This witness, i.e., concerned workman during his evidence identified those signatures as of his own. The copies of vouchers during his evidence were marked as Exts. W-3 to W-3/50, while the signatures appearing on the reverse side of the vouchers in different names were marked as Exts. W-4 to W-4/50. This witness also during his evidence disclosed that local delivery books were also written by him. These books were identified by this witness in course of his evidence and marked as Exts. M-3 to M-3/37. During cross-examination he admitted that he did not receive any letter of appointment while he was engaged as Peon by the Branch Manager at Gaya Branch. He also admitted that he did not demand for any appointment letter from the management. His appointment also was not made through Employment Exchange. He also admitted that he did not submit any application to the Bank for his appointment as sub-staff. On the contrary, from the evidence of MW-1 it transpires that from 16-5-88 to April, 1991 he was posted at Gaya Branch under the management. He disclosed that the said branch at Gaya was opened by the management wherein he became its Branch Manager. At that time the said branch was provided with two permanent staff, namely, he himself and one Clerk-cum-Cashier. Apart from two permanent staff, 2-3 staff also were posted in the said branch on deputation. Just at the time of opening of the said branch no peon was posted. Thereafter one peon was posted there being a permanent staff. He disclosed that the concerned workman was engaged to

perform some jobs absolutely on contractual basis for limited period. The said contractual job was for fetching of water from outside, shifting and re-arranging almirah, table, chairs etc. in the branch. This witness categorically denied the fact that the concerned workman worked in the said branch from 4-1-89 to 5-4-92 continuously. This witness also categorically denied the fact that under coercion and threat the concerned workman was forced to sign the vouchers on its reverse side at different names before payment of wages to him. He also denied the fact that the concerned workman worked in the said branch continuously for more than 240 days in a year. He submitted further that question of his attending duty from 10 a.m. to 6 p.m. did not arise at all as because of the fact that the job entrusted to him on contractual basis was very menial in nature. He disclosed that as per circular issued by the Head Office there was no power on the part of the Branch Manager to appoint any sub-staff on temporary basis. This witness disclosed that in course of hearing before the A.L.C.(C) direction was given to produce the other persons who worked in the said branch from time to time on contractual basis. He submitted that as it was not possible to locate the address of those persons the management could not comply the direction given by the Asstt. Labour Commissioner (C). He submitted that for engagement of any workman on contractual basis it is not the procedure to keep any details or address of particulars of the contractual workers. He submitted that the Bank's records are preserved as per R.B.I. direction. The charge registers which are maintained by the Bank are preserved for five years and thereafter the same are destroyed. This witness in support of his claim relied on the vouchers through which payment was to the concerned workman and those vouchers during his evidence were marked Ext-M-1 series while the signature of the concerned workman were marked Ext. M-2 series. MW-2 during his evidence corroborated the facts disclosed by MW-1. He submitted that the concerned workman was engaged at Gaya Branch to perform some menial work in the month of January, 1989 and in total he did not work more than 59 days as per record. He worked during the months of January, February and March, 1989. He further submitted that for appointment in the post of Peon under subordinate cadre the Authority issued two circulars and as per the said circulars appointment of peon is controlled. The two circulars during his evidence are marked as Exts-M-4 and M-5. He further submitted that no Branch Manager is permitted to violate the conditions and directions given in the said circulars. This witness further disclosed that in the months of October, 1992 and November, 1993 the concerned workman submitted two applications to the management and the said two applications during his evidence were marked Ext. M-6 and M-7. The reply given to the A.L.C. (C) by the management dated 27-11-93 was marked Ext. M-8. During cross-examination this witness disclosed that with effect from 8-4-92 one Anirudh Sharma who was a Canteenboy was

posted as Peon at Gaya Branch after his selection. Prior to that date one Ram Sufal Mourya was posted as Peon at Gaya Branch. This witness categorically denied the fact that the concerned workman was engaged as peon for the period from 4-1-89 to 5-4-92 as no peon was posted there. WW-1 is the Labour Enforcement Officer who on receipt of an application dated 15-2-93 of the concerned workman (Ext. W-2) inspected the Gaya Branch of the State Bank of Bikaner & Jaipur. He submitted that during his inspection he inspected one register wherefrom it transpired that the management paid wages to the casual workers at different names from time to time. He asked the management to provide him the address of those casual workers in whose names payment was made for discharging their duties as casual workers, but the management could not supply the address of those casual workers accepting the address of the concerned workman. Then he wrote a letter to the management asking them to submit statement in relation to the concerned workman who performed his duty as casual worker. As the management refused to submit any such statement he advised the concerned workman to raise an industrial dispute. However, this witness admitted that in course of inspection he did not enquire how long the concerned workman worked under the management as casual worker. He submitted that after inspection he drew up a report on the basis of material facts collected from the record in course of enquiry. It is really curious to know that in course of evidence of this witness the concerned workman failed to submit the said report in order to consider the facts recorded therein by the Labour Enforcement Officer. This witness during his cross-examination disclosed that he forwarded his report to the A.L.C. (C), Patna. The record of the A.L.C. (C) was corroborated by this witness, but from the A.L.C. (C) report he has failed to trace out that report which was submitted by him.

6. Considering the evidence of the concerned workman as well of the management, I find no dispute to hold that the concerned workman worked at Gaya Branch of the management's Bank. Now the question is how long the concerned workman worked there. As per submission of the concerned workman he was engaged by the Branch Manager, Gaya Branch to work as Peon from 4-1-89 and in that capacity he worked till 5-4-92 continuously. It is his further claim that during this period in each year he put his attendance for more than 240 days in a year. His further contention is that the management without giving any notice or paying him any compensation terminated him from his service with effect from 5-4-1992. On the contrary, from the contentions of the management it transpires that the concerned workman was engaged to perform some menial work absolutely on contractual basis from 4-1-89 to 5-4-92. MW-2 during his evidence disclosed that in all the concerned workman during his period worked for 59 days. It is seen from the record that both sides in support of their claims submitted vouchers through which payment was

made to the concerned workman. Vouchers submitted by the management were marked Exts. M-1 to M-1/12. The vouchers submitted by the concerned workman were marked Exts. W-3 to W-3/50. The vouchers marked as Exts. M-1 to M-1/12 show payment of wages to the concerned workman for his work under the management on 7-1-89, 15-2-89, 6-1-89, 22-12-90, 9-2-91, 18-9-90, 23-18-91, 6-4-90, 14-7-90, 8-7-89, 7-10-89, 28-12-91 and 9-1-92. These vouchers speak clearly that not only the concerned workman but also other persons also signed on the reverse sides. The vouchers marked Exts. W-3 to W-3/50 were also not only signed by the concerned workman but also signed by different persons. Considering these vouchers there is no scope to draw any conclusion that the concerned workman drew wages from the management during the period in question. It is the specific allegation of the concerned workman that the Branch Manager under coercion and threat obtained his signature on the reverse side of the vouchers in different names for payment of wages to him in connection with discharge of his duty as peon. The management categorically denied this fact. Naturally onus shifted on the concerned workman to establish that the signatures in the name of different persons appearing on the reverse side of the vouchers were actually his signatures and he did so under threat of the Branch Manager. WW-1, who is the Labour Enforcement Officer, on receiving a complaint from the concerned workman in the year 1993 inspected the said Branch and examined some registers. It is fact that in course of the said inspection of registers he found names of different persons who received wages as casual workers putting their signatures on the reverse sides of the vouchers. There is sufficient reason to believe that the management failed to furnish the particulars of all casual workers who received wages from the Bank on demand of the L.E.O. No doubt, the management have failed to furnish the names of those casual workers but until and unless it is established beyond all reasonable doubt that the signatures appearing on the reverse side of the vouchers in different names were actually the signatures of the concerned workman there is no scope to draw adverse inference against the management. The concerned workman had the scope to submit prayer for examination of the signatures by the Handwriting Expert, but he did not consider necessary to do so. The management relying on the documents marked Exts. M-4 and M-5 submitted categorically that they maintain Recruitment Rules in the matter of recruitment of subordinate staff and violating the said circular the Branch Managers are authorised to appoint any subordinate staff even on temporary or casual basis. The concerned workman admitted in course of his cross-examination that neither he received any letter of appointment nor his name was forwarded by the Employment Exchange. He admitted that he also did not submit any application for his engagement as subordinate staff under the management. It is really peculiar to note that

the concerned workman's name was not forwarded by the Employment Exchange. He also did not submit any application for his appointment. He also did not receive any letter of appointment as subordinate staff and then under which capacity he started working in the said Branch. No explanation on the part of the concerned workman is forthcoming satisfactorily why he did not place all these facts, to the higher authority while he was very much in service. Definitely it should be taken into consideration that the concerned workman was on the weaker side but for that reason there was no bar on his part to send a secret letter to the higher authority for holding proper enquiry in the matter of his appointment. On the contrary, it is the specific contention of the management that as the said Branch at Gaya was newly created branch temporarily for taking up some menial work they used to engage workers from time to time to perform the said jobs. It is their categorical submission that the said job was absolutely temporary in nature and for which question did not arise to work continuously for more than 240 days in each calendar year. They further disclosed that as the job was absolutely temporary in nature question of giving any notice or payment of any compensation as per Sec. 25-F of the Industrial Disputes Act did not arise at all. The concerned workman during his evidence submitted 50 vouchers which he obtained during the period of his tenure. These 50 vouchers were issued for discharging duties for 50 days by the management and payment of his wages was made to him. Accordingly on the basis of these vouchers there is no scope at all to say that the concerned workman worked under the management continuously during the period in question and performed his duty for more than 240 days in a year. In view of the decision reported in 2003 (96) F.L.R. 492 their Lordships of Hon'ble Apex Court observed clearly that burden of proof is on the workman to establish that he worked for 240 days in a year under the management. The question of invoking provision of Sec. 25-F comes in when it is established that the concerned workman was discharged from his work in spite of performing his duties for more than 240 days in a year, in view of the decision referred to above. Accordingly, the burden rested on the concerned workman to establish in view of the decision referred to above that he worked as subordinate staff at Gaya Branch for more than 240 days in a year during the period of his tenure. The representative of the concerned workman in course of extending his argument relied on the decision of the Hon'ble High Court, Patna passed in connection with CWJC No. 9/141/92. I have carefully considered the said decision. It transpires that the case of the concerned workman has got its similarity with the case of the concerned workman who raised industrial dispute and on the basis of award passed by the learned Tribunal the writ petition was filed before the Hon'ble High Court at Patna and the Hon'ble High Court, Patna passed the order upholding the case of the concerned workman. In that it was the allegation of the workman that the Branch Manager

used to obtain his signature on the vouchers at different names under force in spite of his discharging his duty as casual worker. Accordingly the said workman made a complaint dated 15-1-1987 to the D.C., Dhanbad and thereafter on being directed the B.D.O., Baliapur made an enquiry and after enquiry the B.D.O. submitted his report in April, 1987 to the effect that the management obtained signature of the concerned workman in different vouchers under different names under coercion and threat though the said workman continuously worked there as subordinate staff. Their Lordship of Hon'ble Court dismissed the writ petition preferred by the management upholding the award passed by the learned Tribunal in favour of the concerned workman as the Hon'ble Court did not disbelieve the report submitted by the B.D.O. Here not an iota of evidence is forthcoming that the signatures appearing in different vouchers are the signature of the concerned workman and the same were obtained under coercion and threat by the management excepting from the evidence of the concerned workman. It is seen that the L.E.O. had the scope to make thorough enquiry about the allegation made by the concerned workman with a view to arrive into definite conclusion if the signature appearing in different vouchers were the signatures of the concerned workman or not. I find no hesitation to say that L.E.O. did not perform his duty properly to help the Tribunal for unworthing the truth. Just relying on the evidence of the concerned workman there is no scope to draw any definite conclusion that it was the concerned workman who signed the vouchers at different names on being threatened by the Branch Manager. There is also no material evidence on record to show that the concerned workman worked for the period in question and put his attendance of 240 days in a year. Until and unless this vital fact is established there is no scope to arrive into any conclusion that the stoppage of work of the concerned workman by the management has been vitiated for non-compliance of provisions of Sec. 25-F of the I.D. Act.

7. Accordingly, after careful consideration of all the facts and circumstances I hold that the concerned workman has failed to establish his claim with reasonable certainty and for which he is entitled to get no relief according to his prayer.

8. Accordingly, the following is rendered :

The action of the management of State Bank of Bikaner and Jaipur, Patna in terminating the services of Sh. Naresh Rajak is legal and justified and the concerned workman is not entitled to get any relief.

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 112.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इसरी रेलवे के

प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या आई.डी.सं. 181/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-12-2003 को प्राप्त हुआ था।

[सं. एल. 41012/68/2001-आई. आर. (बी.-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th December, 2003

S.O. 112.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No.-181/2001) of the Central Government Industrial/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 19-12-2003.

[No. L-41012/68/2001-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR-COURT, LUCKNOW

PRESENT :

Shrikant Shukla, Presiding Officer

I.D. No. : 181/2001

Ref. No. : L-41012/68/2001-IR(B-I) dated : 11-12-2001

BETWEEN

Rakesh Kumar, S/o Radhy Shyama, Jhalasi Helper
566/K/130, Amrudibagh, Lucknow

AND

The Sr. Divisional Personal Officer, Northern Railway,
DRM Office, Hazratganj, Lucknow (U.P.)-226001.

AWARD

The Government of India, Ministry of Labour vide their order No. L-41012/68/2001-IR(B-I) dated 11-12-2001 referred following issue for adjudication of this Tribunal :

"Whether the action of the management of Northern Railway, Lucknow in not assigning the seniority w.e.f. 1984 and not calling and fixing the name in ESM's panel of Rakesh Kumar was legal and justified ? If not, to what relief the workman is entitled to ?"

The workman's allegation is that he has worked as casual labour for long period and was called for the appointment of permanent signal khalasi against the short-fall of SC/ST quota vide DRM's letter No. 220E/II-I/APP.

Screening/SC & ST/84-85 dated 11/14-5-84. The worker was declared suitable for the post and was placed on serial No. 5 of the list of successful candidates. The worker was medically tested and being found fit vide memo No. 058293 he was posted as substitute Khalasi. The next screening of all casual labours of S&T branch was held in the year 1987 in which he was not called owing to the fact that he has already been selected in the screening test of SC/ST in the year 1984 against the shortfall quota. As the shortfall in SC/ST signal khalasis was not made up after the two screenings of 1984 and 1987 another screening was held in the year 1988 from the open market to fulfil the shortfall and to form a panel of signal khalasis. After all these three screenings a seniority list of signal khalasis was circulated in which the applicants name was not shown, hence the applicant made an appeal to the administration and he was told that his name was left by mistake and assured that it would be corrected. After many representations for more than seven years he was again called for screening in 1994 for which he opposed as he had already been selected. The worker appeared on protest and got selected once again, but in the revised seniority list his name was placed below to those candidates who were selected and posted after him. The worker was promoted in the year 1995 as khalasi helper, which is considered as a safety post, i.e. the post on which an employee can be promoted only when he has worked continuously for at least two years as a signal khalasi. This promotion confirms his appointment of 1987 and shows that the applicants name should be clubbed in the seniority list of khalasi helper and not in the list of signal khalasi. The department having asked the signal khalasis of S&T deptt. to choose between the MSM or ESM side, the applicant opted for ESM side, but was not called for the trade test of ESM. Wherefore the applicant lodged a complaint against the two things before the Assistant Labour Commissioner (C), Lucknow to protect the legitimate rights of poor schedule caste employee and to assign the seniority from the first test results of 1984 and to incorporate the applicants name in the ESM's panel in which his juniors were taken. It has therefore, been prayed by the workman that seniority amongst the S&T khalasis be corrected and a separate seniority list of the khalasi helper be prepared. The workman has also requested that his name be incorporated in ESM's panel from the back date and the arrears of the pay difference should be paid to him.

The opposite party has denied the claim of the workman. The management of railways has admitted that Rakesh Kumar was previously engaged as casual labour and called for temporary appointment for the post of substitute khalasi vide letter No. 220E/II-I/Sub/8 dated 28-11-84 by the official concerned and selected as substitute khalasi on 29-11-84. This is also admitted that workman was found medically fit in class B-I in year 1984 and directed for posting of substitute khalasi in S&T deptt. His name was placed at serial No. 5 of notice

dated 28-11-84. It is stated that no screening was held in 1984 of workman, Rakesh Kumar and he has wrongly mentioned in para 4 that he was screened in 1984. This is also admitted that in year 1988 screening has been done by the administration to fill up the vacancies of the shortfall of SC/ST quota from open market as per decision of competent authority, accordingly as well as to meet out the ends of reservation policy and a seniority list of signal khalasi was circulated by administration. It is also submitted that workman was called for screening for regularization of services in year 1994 and his services was regularized as S&T khalasi vide letter No. 220E/II-I/Sig./Screening/S&T/94 LKO dated 14-7-95 w.e.f. 4-10-94 accordingly and thereafter he was promoted from khalasi to khalasi helper against shortfall of SC quota w.e.f. 24-11-95. The management case is that the workman was called for screening in 1994 first time and screened accordingly by administration and the workman has appeared in the screening and selected, he has not submitted any protest at the time of screening but thereafter he raised this false case against the administration and the workman was placed on right seniority and no junior to him was promoted without adopting the process/rules laid down by Railway Board or Local Administration. It is also submitted the workman, Rakesh Kumar along with other four persons called for helper khalasi test by the officer concerned on 20-10-95 and workman was promoted to the post of khalasi helper from the post of signal khalasi against shortfall SC/ST quota on 24-11-95. The workman raised this industrial disputes on the fake and frivolous grounds and without any legitimate right. The opposite party's pleas are that workman was engaged as casual labour and subsequently in year 1984 he was selected as substitute khalasi in S&T deptt. But the workman failed to produce the detail period of working casual labour on the prescribed performa of whose casual labour/substitute has engaged prior to 1-6-78 and 120 days have also been completed on 21-12-84. In this connection the rules laid down in para 1515 of Indian Railway Establishment Manual of volume-I in revised edition 188 is clearly shows that the right and privilege admissible to substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants from time to time on completion of four months continuous service. Substitute school teacher may however be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection. A seniority list has been prepared for the trade test and promotion of ESM Grade-II in which the name of workman, Rakesh Kumar was placed at serial No. 144 and he will be called for the same accordingly. The opposite party has also mentioned that recognised union URMU had espoused the cause of workman in PNM meeting with administration and the same was considered by the administration and decision taken i.e. the workman, Rakesh

Kumar has been assigned corrected seniority. The matter was closed by the union after due satisfaction and the workman now raised the same dispute individually before this Tribunal which is not maintainable and he has no right to raise same dispute which is already settled by administration with the consent of recognised union.

The workman has filed rejoinder but has not contradicted the fact that his matter was taken for decision in PNM meeting by recognised union URMU.

The workman and the opposite party have filed affidavit and the parties have been cross-examined.

The workman has filed the photo copy of the following documents :

1. Letter No. 220/2.I/Niukti/Screening/SC/ST/84.85 dated 14-5-94 for regularisation of substitute khalasis.
2. Letter No. 220/II-I/Sub/84 dated 18-11-1984, notice pertaining to casual labour for posting as substitute khalasi in S&T deptt. In existing vacancies provided they are declared medically fit.
3. Letter No. 220-I/II-I/S&T/Screening/94 dated nil December, 94 regarding the issuance of appointment letter of khalasis of various categories.
4. Letter dated 25-5-99 regarding trade test in respect of Vidhyut Sanket Anurakshak Grade-II.
5. Letter dated 24-5-99 regarding trade test in respect of Vidhyut Sanket Anurakshak Grade-III.
6. Letter dated 20-10-95 about substitute helper, khalasi.
7. Copy of letter No. E(NG)II-84/CD/85 dated 20-1-1989 about filling of group D class IV vacancies by empanelment of casual labour and substitute extension of screening procedure.
8. Copy of Railway Board's letter No. E(NG)II-88 dated 1-11-88.
9. Letter No. 220E/0/4-I/I(E-4) dated 5-8-88 regarding the formation of interview committee for the appointment of group C&D.

Heard the learned representatives of the parties and perused the evidence.

It is admitted fact that the workman Rakesh Kumar was casual labour and thereafter he was appointed as substitute khalasi in the year 1984.

Rakesh Kumar has tried to state in the cross-examination that he went through the screening 1984, however, he could not tell exact date and month when he was screened. He has also stated that the screening was conducted in 1984 and that it was also conducted in 1994. He has tried to state that he did not go through screening of 1994 of his own but he was threatened to go through screening of 1994 else he would be terminated. He was made regular in 1994 and in the year 1995 he was promoted on the post of helper khalasi and previously he was working as substitute khalasi. In his cross-examination he has claimed that his seniority be determined since year 84.

Assistant Personal Office of DRM, Northern Railway, Shri Raman Kumar Sharma has stated in his cross-examination that only those persons were appointed as substitute khalasi who were casual labour prior to 1-6-78. The workman, Rakesh Kumar worked as casual labour for 339 days prior to 1-6-71.

From the paper No. 2/4 filed by the workman i.e. letter dated 14-5-84 it is made out that candidates were invited for appointment as substitute khalasi in S&T categories along with educational qualification certificates, character certificate, caste certificate, casual labour card etc. It was also notified in the said letter that in case medical examination is required then they could be detained and they would have to pay Rs. 8. With regard to this paper the Assistant Personal Officer was questioned and to a question of the representative of the worker he replied that after verifying the facts, working days etc. the documents were called for.

From the letter paper No. 2/5 dated 18-11-1984, submitted by the workman himself it is clear that Rakesh Kumar alongwith others was posted as substitute khalasi in S&T deptt. against the existing vacancies of khalasi provided they are declared medically fit in category B-1 as prescribed. It is therefore, clear that before the appointment of Rakesh Kumar as substitute khalasi he was a casual labour with the result he secured appointment as substitute khalasi and not as a regular khalasi and this fact is not disputed as has been admitted by the workman himself in the cross-examination. There appears to be no screening test but only medical test. The statement of the workman cannot be believed that he was screened in 1984 moreover he has not been able to file any document to support that he had been screened in 1984. The Assistant Personal Officer has clearly stated that once the person is recruited in regular side then only screening is required in connection with his seniority. The substitute khalasi and regular khalasi are not on the same footing. According to the part-I of the Railway manual No. 1515 rights and privileges admissible to substitutes are defined which are reproduced below :

Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway

servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

Raman Kumar, Assistant Personal Officer by affidavit has proved that the worker was appointed as casual labour and called for temporary appointment for the post of substitute khalasi vide letter dated 28-11-84 by the official concerned and selected as substitute khalasi on 28-11-84 and no screening of workman, Rakesh Kumar was done in the year 1984. It is also stated in the affidavit that the workman was found medically fit in class B/I in year 1984 and directed for posting of substitute khalasi in S&T deptt. and his name was placed at serial No. 5 of notice dated 28-11-84. It has not been alleged that any person junior to him was shown in the list of substitute khalasi. The workman on the other hand has tried to mislead the Court wherein he has tried to say that vide letter dated 14-5-84, he was appointed as signal khalasi. His evidence is not trustworthy. The document has to be read as a whole. The contents are very much clear and by going through both the paper dated 14-5-84 and letter dated 18-11-84 it is not clearly made out that he was appointed as regular signal khalasi.

The workman himself has assisted that the screening was conducted in 1984. From the evidence it is proved that there was no screening in 1984 as alleged by the workman. Even Assistant Personal Officer, Mr. Raman Kumar Sharma has stated in cross-examination that there was no screening test prior to 1984. However, he has admitted that due to crash programme for appointment of SC/ST candidates from open market screening was conducted in 1988 and whosoever applied was considered and called for the screening test. The workman himself does not prove that he applied for appointment as khalasi in 1988 as internal candidate and he was not called for. Therefore, the evidence of Raman Kumar Sharma, the Assistant Personal Officer cannot be disbelieved.

Regarding the screening test conducted in 1994 the Assistant Personal Officer of the railways has stated that in the screening of 1994 out side candidates were not there and only internal candidates were there and it is admitted by the workman that he underwent the screening test in 1994 and he was made regular.

So far as seniority is concerned the workman was specifically questioned as to what was his seniority in 1995 and he could not say and could not tell whether any seniority list was prepared or not. There was no coercion exercise on him for screening test as the workman has alleged.

Now the question is whether he was entitled to be called in for ESM's selection ?

According to the evidence available on record the workman was promoted as khalasi helper in year 1995 w.e.f. 24-11-95 against the short fall SC quota. Workman along with other 4 persons was called for helper khalasi test by the officer concerned on 20-10-95 and the workman was promoted to the post of helper khalasi from the post of signal khalasi against short fall SC/ST quota on 24-11-95. According to the evidence of Assistant Personal Officer of railway the seniority list has been prepared for trade test and promotion of ESM Grade-III in which the name of workman was placed at serial No. 144 and will be called for the same accordingly.

In cross-examination Sh. Raman Kumar Sharma, Assistant Personal Officer has stated that there are three trades of skilled worker which are filled from amongst the khalasi helper, they are ESM, MSM and Miscellaneous and the worker has to exercise his option for above category. Thereafter, trade test is taken. He has also stated to the question by the Court that the Rakesh Kumar opted for the post of ESM but he was not that senior so as to be promoted on the post of ESM. He has also stated that none of his juniors were promoted to the post of ESM.

The workman was asked in cross-examination whether any junior to him has been called for trade test ? He said his junior, Ram Kishor was called for the test but at the same time he stated that his screening test was conducted in 1989. It is noteworthy that screening test of Rakesh Kumar was conducted in 1994 and screening test of Ram Kishor was conducted in 1989. This shows that Ram Kumar was junior to the workman and at the same time Rakesh Kumar was called for the screening test later to the workman Ram Kishor. Therefore, workman's claim is not justified. Therefore, in the circumstances above and evidence on record I come to the conclusion that Rakesh Kumar was regularized as S&T khalasi w.e.f. 4-10-94 and he was promoted from khalasi to khalasi helper against short fall SC quota w.e.f. 24-11-95 which does not make out that any injustice had been done to him. The workman therefore, cannot claim seniority w.e.f. 1984. As is evident from the affidavit of Shri Raman Kumar Sharma, paper No. t 1/3, para t 2 the worker, Rakesh Kumar was placed at serial No. 144 and it has also been stated that he will be called for accordingly to his seniority. It is also clear that none of his junior has been called in for trade test. Therefore, in calling Rakesh Kumar in ESM's panel is not illegal or unjustified.

No other arguments pressed.

On the discussions above, I come to the conclusion that the workman was not entitled to seniority w.e.f. 1984 as he was appointed as substitute khalasi in S&T deptt. and was placed at serial No. 5 of the notice dated 18-11-84.

The workman has not proved that any of his juniors have been called for making the panel for ESM's & therefore, he is not entitled to any relief. The issues are decided against the workman.

LUCKNOW SHRIKANT SHUKLA, Presiding Officer
12-12-2003

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 113.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 111/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2003 को प्राप्त हुआ था।

[सं. एल. 20012/248/2000-आई.आर. (सी.-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 113.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.-111/2000) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 18-12-2003.

[No. L-20012/248/2000-IR (C-1)]
S.S. GUPTA, Under secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act., 1947.

Reference No. 111 of 2000

PARTIES:

Employers in relation to the management of M/s.
BCCL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Mr. D.K. Verma,
Advocate.

STATE : Jharkhand

INDUSTRY : Coal

Dhanbad, dated the 4th December, 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/248/2000 (C-I), dated, the 29th September, 2000.

SCHEDULE

"Whether the demand of the Union to regularise Sri Indrajeet Paswan and six others as per list enclosed with the order of reference as Time rated Trammer is proper, justified and legal. If so, to what relief are the workmen entitled and from what date?"

2. In this reference neither the concerned workman nor his representative appeared. However, though the management side appeared but abstained from filing their Written statement. It is seen from the record that the instant reference was received by this Tribunal on 1-10-2000 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman but in spite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of W.S. by the concerned workman/union within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union and the management to assist the Court to dispose of the reference in issue on merit. In view of the decision of the Hon'ble Apex Court reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo moto with the expectations for appearance for the workman and the management in spite of issuance of registered notices. As per I.D. Act the workman excepting under provision of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the union for their workmen. These unions in spite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice until and unless the attitude

of the union is changed, I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workmanside is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B.BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 114.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.एम. पी.डी.आई.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 215/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2003 को प्राप्त हुआ था।

[सं. एल. 20012/578/98-आई.आर. (सी.-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 114.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 215/99) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CMPDIL and their workman, which was received by the Central Government on 18-12-2003.

[No. L-20012/578/98-IR (C-I)]

S. S. GUPTA, Under secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947.

Reference No. 215 of 1999

PARTIES:

Employers in relation to the management of CMPDIL,
Ranchi and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : None

State : Jharkhand

Industry : Coal

Dhanbad, dated the 4th December 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/578/98-IR (C-I), dated, the 17th May, 1999.

SCHEDULE

“Kya Shri Bajrang Lohar vidhai canteen key karmakar honey ke natey CMPDIL key sidhey karmakar maney janey chahiya ? Yadi han to is samvandh key kya dinank 15-6-98 sey thekey ki samapti par unki sevay kiya jana vidibat evam nayasangat hai yadi nahi to karamakar kis rahat key patra hai ?”

2. In this reference neither of the parties turned up before this Tribunal. It is seen from the record that the instant reference was received by this Tribunal on 10-6-99 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman/union as well as the management but in spite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of W.S. by the concerned workman/union within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will the fate of the reference made by the ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union and the management to assist the Court to dispose of the reference in issue on merit. In view of the decision of the Hon'ble Apex Court reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo moto with the

expectations for appearance for the workman and the management in spite of issuance of registered notices. As per I.D. Act, the workman excepting under provision of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the union for their workmen. These unions in spite of receiving notices did not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice untill and unless the attitude of the union is changed, I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workmen/union but yielded no result. This attitude shows clearly that the workmanside/union is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 115.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 149/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2003 को प्राप्त हुआ था।

[सं. एल. 20012/50/2001-आई.आर. (सी.-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 149/2001) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 18-12-2003.

[No. L-20012/50/2001-IR (C-1)]

S. S. GUPTA, Under secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 149 of 2001

PARTIES:

Employers in relation to the management of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman : Shri S.C. Gaur,
Advocate

On behalf of the employers : Shri D.K. Verma,
Advocate

STATE : Jharkhand

INDUSTRY : Coal

Dhanbad, dated the 4th December 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(I)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/50/2001-IR (C-1), dated, the 30th April, 2001.

SCHEDULE

"Kya National Coal Workers Congress ko Bharat Koking Coal Bijua Kshetra key pravandtantra sey mang ki shri-prasad bhar line mazdoor jo ki dinank 1991 sey line mistry ka krya kar rahey hai ko upaukt pad evam betan man me padaस्था kiya jaya nayasangat evam uchit hai ? Yadi ha to karmkar kis raahat key patra hai tatha kis tarikh sey ?"

2. In course of hearing of the instant reference the representative of the workman submitted his prayer to pass a 'No dispute' Award as the concerned workman involved in it is not interested to proceed with the case. Learned Advocate for the management raised no objection in view of the prayer made by the side of the workman. Heard both sides. Since the concerned workman is not interested to proceed with the hearing of this case, there is no reason to drag on the same. Under such circumstances, a 'No dispute' Award is rendered and the instant reference case is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

SCHEDULE

का. आ. 116.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण -II, धनबाद के पंचाट (संदर्भ संख्या 214/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-03 को प्राप्त हुआ था।

[सं. एल.-20012/602/97-आई. आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 116.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 214/98) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 18-12-03.

[No. L-20012/602/97-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD****PRESENT**

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE No. 214 OF 1998

PARTIES : Employers in relation to the management of Joyrampur Colliery of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : Shri D. K. Verma, Advocate

State : Jharkhand

Industry : Coal.

Dhanbad, dated the 4th December, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/602/97-IR (Coal-1), dated the 30th November, 1998.

"Whether the action of the management of Joyrampur Colliery of M/s. BCCL in dismissing Sri Mahendra Paswan, M/Loader from the services of the company w.e.f. 21-6-94 is justified? If not, to what relief the workman is entitled?"

2. In this reference neither the concerned workman nor his representative appeared. The management side, however, made their appearance through their learned Advocate, but failed to file their W.S. It is seen from the record that the instant reference was received by this Tribunal on 22-12-98 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman/union but inspite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of W.S. by the concerned workman/union within 15 days is a mandatory one. The concerned workmen not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workmen/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision of the Hon'ble Apex Court reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose the reference on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo moto with the expectations for appearance of the workmen inspite of issuance of registered notices. As per I.D. Act, the workmen excepting under provisions of Section 2A is debarred from raising any industrial disputes. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices did not care to appear before the Court for the interest of the workmen and as a result they have been deprived of getting any justice. Untill and unless the attitude of the union is changed, I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workmanside is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 117.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण -II, धनबाद के पंचाट (संदर्भ संख्या 256/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-03 को प्राप्त हुआ था।

[सं. एल.-20012/254/2001-आई. आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 117.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 256/2001) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 18-12-03.

[No. L-20012/254/2001-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE No. 256 OF 2001

PARTIES : Employers in relation to the management of Bharat Coking Coal Ltd. and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : None.

State : Jharkhand

Industry : Coal.

Dhanbad, Dated the 4th December, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/254/2001 (C-5), dated the 18th September, 2001.

SCHEDULE

"Whether the action of the management of BCCL, Block II area in non regularisation of Shri Shivji Singh as loading clerks is legal, proper and justified ? If not, to what relief is the workman entitled and from what date ?"

2. In this reference neither the concerned workman nor his representative appeared, and no written statement was filed on their behalf. Management also did not turn up in this case. It is seen from the record that the instant reference was received by this Tribunal on 2-11-2001 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman as well as the management but inspite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of written statement by the concerned within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union and the management to assist the Court to dispose of the reference in issue on merit. In view of the decision of the Hon'ble Apex Court reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo moto with the expectations for appearance of the workman and the management inspite of issuance of registered notices. As per I.D. Act, the workman excepting under provision of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the union for their workmen. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude

of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workmanside is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 118.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधन के संबंध में निम्नलिखितों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 131/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-03 को प्राप्त हुआ था।

[सं. एल.-20012/289/91-आई. आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 118.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 131/96) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tisco and their workman, which was received by the Central Government on 18-12-03.

[No. L-20012/289/91-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 131 OF 1996

PARTIES:

Employers in relation to the management of Jamadoba Colliery of M/s. Tisco. Ltd. and their workman.

APPEARANCES:

On behalf of the workman : Shri B. N. Singh,
Advocate.

On behalf of the employers : Shri D. K. Verma,
Advocate

State : Jharkhand

Industry : Coal.

Dhanbad, dated the 4th December, 2003.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/289/91-IR (Coal-I), dated, the 6th November, 1996.

SCHEDULE

"Whether the demand by the Union for employment of Shri Umesh Kumar Singh, the Grand son as dependant of Late Ram Prit Singh is legal and justified? If so, to what relief is Umesh Kumar Singh entitled?"

2. The case of the concerned workman according to written statement submitted by the sponsoring Union on his behalf in brief is as follows :—

It has been submitted by the sponsoring Union that Ram Prit Singh was an employee of M/s. Tata Iron and Steel Co. Ltd. since 21-5-1946 and retired from his service on 21-2-78 illegally being declared medically unfit due to loss of vision of both sides. They submitted that one of the condition of service of the company was to give employment to the dependant of the person superannuated/ or declared medically unfit etc. The said workman submitted that management assured him to provide employment to his son Ram Naresh Singh, an Advocate if and when a suitable post comes into existence and is duly advertised or notified. They submitted that in the year 1978 management notified the post of Assistant Law Officer and in response to that notification said Ram Naresh Misra, Advocate applied for the post in pursuance to the management's letter No. JMB/473/10705 dt. 16/23-9-76. They alleged that in spite of submitting application management did not issue any letter of interview to him. They submitted that as the management came out of their assurance to provide employment to Ram Naresh Singh in suitable post according to his qualification an Industrial dispute was raised for non employment of Sri Ram Naresh Singh S/o. Ram Prit Singh and Muneswar Singh, son-in-law who was husband of Bimala Devi, adopted daughter of Ram Prit Singh. The said dispute was illegally declared as unfit by the management on wrong and false representation of facts by the Central Govt. They submitted that the Central Govt. had no jurisdiction to declare the Industrial unfit for reference.

They submitted that Ram Prit Singh had also two grand sons viz. Umesh Kumar Singh and Yogesh Kumar Singh but as they were minors their claim at that time could not be placed. In the year 1990 said Umesh Kumar Singh attained his majority and raised an Industrial dispute which also was declared unfit by the management and for which the sponsoring Union filed a Writ Petition bearing No. CWJC No. 3338 of 1995 (R) at Ranchi Bench of Patna High Court. Hon'ble Court in disposing of the Writ Petition passed order dt. 16-8-96 declaring the action of the Central Govt. refusing to make reference of the Industrial Dispute as without jurisdiction and directed the Central Govt. to make the present reference. Accordingly, Ministry has referred the Industrial dispute before this Tribunal for adjudication.

The concerned workman accordingly submitted his prayer for passing award directing the management to provide employment to Umesh Kumar Singh grand son of Ram Prit Singh.

2. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the written statement submitted on behalf of the concerned workman. They submitted that Ram Prit Singh joined his service under the management. On 21-5-46 and superannuated from his service on 21-2-78 after completion of 60 years of age as his date of birth was 21-2-1918. They submitted that the management follows a procedure for providing employment to dependents of employees to fill up vacant posts and in that connection each and every permanent employee of the company after completion of 15 years of service is given option to get two of his dependents enrolled in the dependents employees register as first and second choice. Whenever vacancy arises on any post of unskilled or piece rated worker, the dependents are selected for their employment according to the seniority of the employees in the service of the company. An employee is also eligible to give option to get his grand son enrolled as his dependant in case his son is invalid, and or is medically unfit for his employment. They submitted that Ram Naresh Singh S/o Ram Prit Singh is a practicing Advocate in Civil Court at Dhanbad. Said Ram Naresh Singh was not dependent on his father and moreover he did not like to be appointed as a piece rated worker like minor/loader or as unskilled worker like general mazdoor in a coal mine. Accordingly, said Ram Prit Singh did not get his son's name enrolled as his dependent for his future employment against future vacancy. He also did not get any other person enrolled as his dependent as no one was dependant on his earnings at the time when he was to get his dependent enrolled in the employees dependent register. They submitted that long after his superannuation said Ram Prit Singh approached the management for employment of Muneshwar Singh claiming that he was his son-in-law as he adopted his wife as his daughter. They

alleged that Ramprit never declared Muneshwar Singh as his dependent son-in-law during the entire period of his service and also did not get his name enrolled as his dependant son-in-law. They disclosed that as per his declaration he had no daughter and he was having one issue i.e. his son Ram Naresh Singh. They submitted that the present attempt made by the sponsoring Union for getting the grand son of late Ramprit Singh to be employed as his dependent grand son is absurd as because Umesh Kumar is the dependant of his father Ramnaresh Singh who is an Advocate and was never the dependent of Ramprit. Accordingly, they submitted that the sponsoring Union has no ground to justify the demand for employment of Umesh Kumar Singh and for which the claim is liable to be rejected.

3. POINTS TO BE DECIDED

"Whether the demand by the Union for employment of Shri Umesh Kumar Singh, the Grand son as dependent of Late Ram Prit Singh is legal and justified ? if so, what relief is Umesh Kumar Singh entitled ?"

4. FINDING WITH REASONS

It transpires from the record that the concerned workman in order to substantiate his claim has examined one witness as WW-1. Management on the contrary also examined one witness as MW-1 in support of their claim. Considering the facts disclosed in the pleadings of both sides and also considering evidence on record I find no dispute to hold that Ramprit Singh who was the grand father of the concerned workman joined his service under the management on 21-5-1946 and thereafter superannuated from his service with effect from 21-2-78 on attaining his age of sixty years as his date of birth was 21-2-1918. The concerned workman in his pleading however, made an allegation that said Ramprit Singh was illegally superannuated from his service by the management on being declared medically unfit. As this fact has not been substantiated on the part of the workman in course of final hearing of this case I find no scope to take cognizance of the same. Here the point for consideration is whether the concerned workman being grand son of Ramprit Singh is entitled to get employment under the management or not as per the policy maintained there. The concerned workman Umesh Kumar Singh is the son of Ram Naresh Singh who happened to be the son of said Ramprit Singh. It is the contention on the part of the concerned workman that as per policy of the management one dependent of the workman is entitled to get employment on superannuation of the said workman or if the said workman declares medically unfit to work. It has been submitted on the part of the workman that management assured said Ramprit Singh to provide employment of his son Naresh Kumar Singh who is an Advocate by profession if any suitable post comes into existence and is duly advertised or notified

on the Notice Board. It has been further submitted that the post of assistant land officer was notified and said Ram Naresh Singh submitted his application for the said post but the management neither called him in the interview nor kept the assurance which they gave to Ramprit for employment of his son in the law department if any suitable vacancy arose. Accordingly, an industrial dispute was raised for non-employment of Ram Naresh Singh and of Muneshwar Singh who happened to be the husband of the adopted daughter of Ramprit Singh for conciliation. It reveals that in spite of failure of the conciliation proceeding the workmanside did not move further like that of the case of Umesh Kumar Singh. The management not only in their pleading but also in course of evidence explained categorically why the case of Naresh Kumar Singh and Muneshwar Singh could not be considered for employment. They in course of their employment also relied on their reply given to Ramprit Singh marked as Ext. W/1. However, as the employment of Ramnaresh Singh and Muneshwar Kumar Singh are not the subject matter of reference in question I do not find sufficient scope to reopen the said issue here. It is admitted fact that Umesh Kumar Singh is the son of Ramesh Kumar Singh i.e. the grand son of Ramprit Singh. It is the claim of the sponsoring Union that said Umesh Kumar Singh was dependent of Ramprit Singh and for which he is very much entitled to claim employment as per policy of the management.

Management on the contrary categorically denying the claim of the sponsoring Union submitted that said Umesh Kumar Singh was the dependent of his father Ramnaresh Singh who by profession is an Advocate since 1974 and was never the dependent of his grand father Ramprit Singh. They submitted that as per the procedure of employment an employee can sponsor the case of his grand son for his employment in the capacity of his dependent of his son is invalid or dead or is medically unfit for employment. In support of that claim management in course of evidence relied on the standing procedures maintained by them for enrolment/employment of the dependent of the employee of the company. Ext. M-2 clause 1 of the said procedure speaks as follows :—

“Definition of dependent.”

The following are considered as dependant of an employee for the purpose of employment :—

(a) Son (b) Brother

(c) Adopted son where an employee has no son. The procedure for adopted has been laid down in Circular No. JMB/5/008473 dated 11-7-1979: Adoption is not accepted in respect of Muslim employee since there is no adoption provided under Mohammadan law. The dead of adoption as indicated in the circular mentioned above, should be as per Hindu Adoption and Maintenance Act, 1956.

(d) Son-in-law. This decision is applicable to the employees who were on roll on 27-10-76 and thereafter.

(e) Grand son (Son's son or daughter's son) provided the employees son is infirm or he has no surviving son. This decision is applicable to the employees who were on roll on 22-9-1977 and thereafter).

Management submitted that Rashtriya Colliery Mazdoor Sangh is the only recognised Union who is entrusted to looking after the interest of the workman attached to their organisation. They submitted that the said Union by letter dt. 7-2-81 clearly expressed their consent to follow the procedure for employment of dependant son of any worker as per the adopted policy. The said letter during evidence of MW-1 was marked as Ext. M-3. Para 4 of the said letter speaks as follows. “In pursuance of the above offer, a meeting of the Secretaries of all the Branches in Tisco colliery was held and it was unanimously agreed that the existing employment rules were more favourable and should continue to be enforced.” During cross examination WW-1 categorically admitted that the sponsoring Union i.e. Coalfield Labour Union who has raised this dispute is not a recognised Union of Tisco. He has failed to produce a single scrap of paper to show if Ramprit Singh was the member of the said Union. However, he admitted categorically that neither he himself nor his son-in-law remembers are of the said Union. There is no strict rule that the unrecognised union is debarred from raising any dispute on behalf of any aggrieved workman. But before doing so it is to be looked into that the recognised Union as refused to raise any dispute he had to take the help of unrecognised Union in this regard. Therefore, onus is on the workman to establish that Umesh Kumar Singh has entrusted the sponsoring Union to raise the dispute in question. Umesh Kumar Singh neither deposed before this Tribunal nor submitted any paper to show that he entrusted the sponsoring Union to raise the dispute. It is seen from the record that father of Umesh although appeared and also deposed before this Tribunal to substantiate the claim of his son being a practising Advocate. During cross-examination WW-1 i.e. Ram Naresh Singh admitted that his father did not record the name of his son Umesh Kumar in the dependent's register as per prevailing procedure of the company. In his cross-examination he admitted that in the year 1972 he joined in legal profession and since that year he is in this profession ceaselessly. He also has been appointed as Notary Public by the Govt. of Bihar. He submitted that initially Umesh Kumar though dependant on his grand father subsequently he was dependant on him. The very submission of Ram Naresh Singh i.e. WW-1 it speaks clearly that since 1972 he is independently engaged in his legal profession while his father was very much in the service. Therefore, in no circumstances there is scope to say that said Ramnaresh was dependent on his father's income. This witness further

admitted categorically that initially though his son Umesh Kumar was dependent on his grand father subsequently he became dependent on him. It is clear that Ramprit Singh neither recorded the name of Umesh Kumar in the dependant's register nor he was dependant to him. According to the procedure for employment adopted by the management a grand son's claim for employment only will be considered provided employee's son is infirm or he has no surviving son. No evidence is forthcoming before this Tribunal that Ramnaresh Singh son of Ramprit Singh is infirm. No evidence is forthcoming that being an infirm person Ramnaresh is carrying on his legal profession ceaselessly since 1972. As the procedure framed by the management for enrolment/employment of the dependants of the employees has been accepted by the workmen/Union of the company there is no scope to ignore the same if it is not established that they have ignored the claim of any workman deviating from the same.

Accordingly, onus absolutely shifts on the sponsoring Union to establish that management illegally, arbitrarily and violating the principles of natural justice refused to give employment of Umesh Kumar being his dependant grand son of Ramprit Singh.

I have carefully considered all materials on record and I find no dispute to hold that the sponsoring Union lamentably failed to establish the claim in question. I have failed to find out any material evidence relying on which there is scope to say that management have exposed their discrimination in refusing the claim for employment of Umesh Kumar. Therefore, the concerned workman is not entitled to get any relief in view of his prayer.

In the result, the following Award is rendered :—

"The demand by the Union for employment of Shri Umesh Kumar Singh, the grand son, as dependant of Late Ram Prit Singh is not legal and justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 119. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- II, धनबाद के पंचाट (संदर्भ संख्या 113/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-03 को प्राप्त हुआ था।

[सं. एल.-20012/506/2000-आई. आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 119.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 113/2001) of the Central Government Industrial Tribunal Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 18-12-03.

[No. L-20012/506/2000-IR (C-1)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE No. 113 OF 2001

PARTIES :

Employers in relation to the management of
M/s. B.C.C.L. and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : None.

State : Jharkhand

Industry : Coal.

Dhanbad, dated the 4th December, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/506/2000 (C-I), dated, the 29th March, 2001.

SCHEDULE

"Whether the action of the management of M/s. BCCL in not providing employment to the dependant son Sri Suresh Harijan of the workman Sri Durjar Harijan, Ex-Loader of Ghanoodih colliery is justified, legal and proper ? If not, to what relief is the said dependant of the workman entitled ?"

2. In this case neither the concerned workman nor his representative appeared, and filed Written Statement. Management side though appeared on one occasion subsequently neither appeared nor filed their written

statement. It is seen from the record that the instant reference was received by this Tribunal on 23-4-2001 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman but in spite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of written statement by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union and the management to assist the Court to dispose of the reference in issue on merit. In view of the decision of the Hon'ble Apex Court reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any written statement and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo moto with the expectations for appearance for the workmen and the management in spite of issuance of registered notices. As per I.D. Act the workman excepting under provision of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the union for their workmen. These unions in spite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Untill and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workmanside is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 120.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि.

के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - II, धनबाद को पंकाट (संदर्भ संख्या 252/99) को प्रसारित करती है, जो केन्द्रीय सरकार को 18-12-03 को प्राप्त हुआ था।

[सं. एल.-20012/95/98-आर्. आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 120.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 252/99) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 18-12-03.

[No.L-20012/95/98-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

REFERENCE No. 252 OF 1999

PARTIES : Employers in relation to the management of Govindpur Area of M/s. B.C.C.L. and their workman.

APPEARANCES:

On behalf of the workman : None.

On behalf of the employers : None.

State : Jharkhand

Industry : Coal.

Dhanbad, dated the 4th December, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/95/98 (C-I), dated the 4th June, 1999.

SCHEDULE

"Kya B.C.C.L. Govindpur kshetra ke pravandhtantra dwara Srimati Chholna Kamin key unkey avedan key dinak 19-6-95 ke adhar par, pravandhtantra key paripatra dinak 12-4-95 key antargata swecha seva nivriti yojana ka lav na diya jana tatha unkey ashrrita

putra ko niyukti na dena uchit evam nayasangat hai? Yadi nahi to karmkar evam unkey ashrit kis rahat ke patra hai?"

2. In this reference neither of the parties turned up before this Tribunal. It is seen from the record that the instant reference was received by this Tribunal on 14-6-2002 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman/union as well as the management but in spite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of written statement by the concerned workman within 15 days is a mandatory one. The concerned workmen not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workmen/union. Naturally responsibility rests with the concerned workman/union and the management to assist the Court to dispose of the reference in issue on merit. In view of the decision of the Hon'ble Apex Court reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any written statement and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo moto with the expectations for appearance for the workmen and the management in spite of issuance of registered notices. As per I.D. Act the workmen excepting under provision of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the union for their workmen. These unions in spite of receiving notices did not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Untill and unless the attitude of the union is changed, I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workmanside is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. आ. 121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 14/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-03 को प्राप्त हुआ था।

[सं. एल.-20012/220/2002-आई. आरं. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2003) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 18-12-03.

[No. L-20012/220/2002-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

REFERENCE No. 14/2003

PARTIES : Employers in relation to the management of North Tisra Colliery of M/s. B.C.C.L. and their workman.

APPEARANCES:

On behalf of the workman : None.

On behalf of the employers : D.K. Verma, Advocate

State : Jharkhand

Industry : Coal.

Dhanbad, dated the 4th December, 2003.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/220/2002-I.R. (C-I), dated, the 24th January, 2003.

SCHEDULE

"Kya Bharat Coking Coal Ltd. North Tisra Colliery key pravandhtantra dwara Shri Hardhan Modak Fitter ki seva dinak 13-6-2002 sey samapta kiya jana vidhibat, nayasangat ? evam uchit hai ? Yadi nahi to karmakar kis rahat key patra Hai ?

2. In this case neither the concerned workman nor his representative appeared. However, the management side appeared through their learned Advocate. The representative of the management by filing an office order submitted that the concerned workman involved in the dispute has already been reinstated to his original job and now no more dispute is existing between the workman and the management. Perused the office order and also heard the representative of the management. Since the dispute in question has already been resolved, there remains no more dispute to be adjudicated. Under the circumstances, a 'No dispute' Award is rendered and the instant reference is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 2003

का. अ. 122.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा० को० को० लि० के प्रबंधन के संबद्ध निवृत्तों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 150/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2003 को प्राप्त हुआ था।

[सं. एल. 20012/114/2001-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 19th December, 2003

S.O. 122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 150/2001) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 18-12-2003.

[No. L-20012/114/2001-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD**

PRESENT:

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 150 of 2001

PARTIES:

Employers in relation to the management of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman : None.

On behalf of the employers : Shri H. Nath, Advocate.

STATE : Jharkhand

INDUSTRY : Coal

Dhanbad, dated the 4th December, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/114/2001-C-1, dated the 30th April, 2001.

SCHEDULE

"Whether the demand of the Dhanbad Colliery Karamchhari Sangh for regularisation of S/Shri Arjun Bhuia, Tejnarain Mahato, Damodar Mahato, Jayram Mahato, Manoranjan Mahato and Md. Sariq as time rated workmen with consequential benefit in Mudidih Colliery of M/s. BCCL is just and proper. If so, to what relief are the concerned workmen entitled and from what date ?

2. In this reference neither the concerned workman nor his representative appeared. The management side though appeared through their learned Advocate but did not file their W.S. It is seen from the record that the instant reference was received by this Tribunal on 1-6-2001 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman/union but in spite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of W.S. by the concerned workman within 15 days is a mandatory one. The concerned workmen not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workmen/union. Naturally responsibility rests with the concerned workmen/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass a 'No dispute' Award when both the parties remain absent. There is also

no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo moto with the expectations for appearance of the workmen inspite of issuance of registered notices. As per I.D. Act, the workmen excepting under provisions of Section 2A is debarred from raising any industrial disputes. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices did not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is changed, I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workmen/union but yielded no result. This attitude shows clearly that the workmanside is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 2003

का. आ. 123.— औद्योगिक विवाद अधिनियम, 1947 (1947 का. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 63/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-2003 को प्राप्त हुआ था।

[सं. एल. 40011/3/2003-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 23rd December, 2003

S.O. 123.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 63/2003) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 23-12-2003.

[No. L-40011/3/2003-IR(DU)]

KULDIPRAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT:

Shrikant Shukla, Presiding Officer

I.D. No. 63/2003

Reference No. L-40011/3/2003-IR (DU) dated 29-5-2003

BETWEEN

The Org. Secretary, Bhartiya Mazdoor Sangh, 96/196, Old Ganesh Ganj, Lucknow

AND

The Assistant General Manager (Administration) BSNL, Deptt. of Telecom Gandhi Bhawan, Lucknow.

AWARD

The Govt. of India, Ministry of Labour vide their order No. L-40011/3/2003-IR (DU) dated 29-5-2003 has referred following issue for adjudication to this Tribunal.

"Whether the action of the management of Chief General Manager, BSNL in not granting temporary status to Sh. Jamsher S/o Sh. Munna w.e.f. 1st March, 1992 and not regularising his services is just and legal? If not, to what relief the workman is entitled?"

The reference order is dated 29-5-2003, which received on 26-6-2003 in CGIT-cum-Labour Court, Lucknow. The copy of the reference of was issued to Organising Secretary, Bhartiya Mazdoor Sangh, Lucknow and also to the Assistant General Manager (Administration), BSNL, Deptt. of Telecom, Gandhi Bhawan, Lucknow. The Organising Secretary was asked to file statement of claim complete with relevant documents, list of reliance and witnesses within 15 days but the Organising Secretary or the workman did not file statement of claim. Therefore, notice was issued on 23-7-2003 and to the Organising Secretary and the same was served on 24-7-2003 at 2.30 P.M. but the Organising Secretary did not file the statement of claim. The notices were issued to the Assistant General Manager (Administration), BSNL, Deptt. of Telecom, Gandhi Bhawan, Lucknow on 2-9-2003 and 6-10-2003. The Assistant General Manager (Administration), BSNL, Lucknow has also not filed any written statement.

Since the Organising Secretary of the Bhartiya Mazdoor Sangh, Lucknow has failed to file statement of claim and the opposite party has also not filed written statement therefore, the issue referred to CGIT-cum-Labour Court, Lucknow cannot be answered.

Lucknow,
15-12-2003

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 2003

का. आ. 124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 25/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-2003 को प्राप्त हुआ था।

[सं. एल. 12012/182/2000-आई. आर. (बी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 23rd December, 2003

S.O. 124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial Dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 23-12-2003.

[No. L-12012/182/2000-IR(B-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JAIPUR

Case No. CGIT-25/2001

Reference No. L-12012/182/2000-IR(B-II)
dated 28-3-2001

Shri Om Prakash Singore
S/o. Shri Gordhan Lal,
R/o. 124/D.I.L. Colony,
Jhalawar Road, Kota

...Applicant

Versus

Syndicate Bank,
The Manager, SB, Subjumanandi Branch,
68, Old Dhanmandi, Sarovar Cinema Rd.,
Kota.

...Non-applicant

PRESENT:

Presiding Officer : Shri R. C. Sharma
For the applicant : Mahesh Sharma
For the non-applicants : Shri Anurag Agrawal
Date of award : 05-11-2003

AWARD

The Central Government in exercise of the powers conferred under Clause (D) of Sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (for short 'The Act')

has referred the following industrial dispute for adjudication to this Tribunal which runs as under :—

“Whether the termination of services of Shri Om Prakash Singore S/o Shri Gordhanlal, from 9-9-1999 by the management of Syndicate Bank through Branch Manager, Kota as part time sweeper is legal and justified ? If yes, to what relief the disputant is entitled and from which date ?”

The workman Shri Om Prakash Singore has claimed that he was employed by the non-applicant management as Attender/Sweeper on 1-9-1994, who continuously worked upto 9-9-1999 and has thus completed more than 240 days in each calendar year. At para 3 of the statement of claim he has exhibited a table year-wise as showing the working days per year. But as per his pleadings he was declined to join his duties on 10-9-1999 and has alleged that neither a legal notice was served upon him nor he was paid the retrenchment compensation. The juniors to him were retained by the management while retrenching him. He has further averred that the management has violated the provisions under Section 25-F, 25-N and 25-G of the Act and has prayed for his reinstatement into services with full back wages and other consequential benefits.

Antagonizing the claim made by the workman, the non-applicant in his written statement has pleaded *inter alia* that Udaylal Sahi and Shri Murari Lal were working as regular attender and regular part-time sweeper respectively. Shri Murari Lal was entrusted the duties of attender during the leave absence of Shri Udaylal and in such contingency the job of part-time sweeper was entrusted to the workman for specific period of which he was paid the wages. His services were availed on casual basis for sweeping and wet mopping of the said branch and the fixed charges were paid to the workman for the work done by him. The non-applicant has further pleaded that there was no relationship of employer and employee between the applicant and the non-applicant bank and the workman was engaged purely on contract basis. It is also alleged that the applicant is not a workman as envisaged under Section 2(S) of the Act and the provisions of Section 2 (oo)(bb) of the Act are specifically applicable to the present controversy. The management has denied that it had allowed the employment of juniors after the termination of the applicant.

In the rejoinder, the applicant workman had denied that he was employed on contractual basis by the management and has reiterated the facts as stated in his statement of claim.

On pleadings, the following points for determination were framed :—

- (1) आया प्रार्थी को विपक्षी संस्थान में उदयलाल साल्वी नियमित कर्मचारी के अवकाश पर जाने के कारण एक निश्चित अवधि के लिए नियोजित किया गया था, यदि हां, तो इसका प्रभाव ?

- (2) आया प्रार्थी औद्योगिक विवाद अधिनियम, 1947 में 'कर्मकार' को दी गई परिभाषा में नहीं आता ?
- (3) आया विपक्षी के द्वारा प्रार्थी की सेवा औद्योगिक विवाद अधिनियम, 1947 की धारा 25एफ, जी, 25-एन के प्रावधानों का उल्लंघन की गई है ?
- (4) प्रार्थी किस सहायता को प्राप्त करने का अधिकारी है ?

In the evidence the workman has filed his affidavit, who was cross-examined on behalf of the non-applicant. The counter affidavit of Shri Bhagchand, Clerk of the non-applicant management, has been submitted who was cross-examined by the workman.

The workman has brought on record 11 documents, whereas the non-applicant has placed one document on the record.

I have heard both the parties and have gone through the record.

Points No. 1 & 3 :

Since the facts and questions of law involved in both these points are identical, these are discussed together hereunder.

The Id. representative for the workman contents that the applicant workman had worked with the non-applicant management from 1-9-1994 to 9-9-1999 as Sweeper/attender and this fact has not been disputed by the non-applicant. He further submits that the nature of the duties performed by him are similar to that of a regular worker and it has been pleaded specifically in the replica at para 1 on behalf of the workman, which also could not be disputed on behalf of the non-applicant. The workman, the Id. representative submits, has submitted in support of his case the pay sheets Ex. W-1 to W-11 ranging from the period September, 1994 to September, 1999.

Responding to the submissions made on behalf of the workman, the Id. representative for the non-applicant urges that it is not admitted that the workman had worked for 240 days in a year but he had worked as a substitute in place of Murarilal, attendant. The Id. representative further submits that the pay sheets show that workman was employed as Badli sweeper and the wages to him was paid in such capacity. This fact, as per his submission, is further corroborated by the appointment letter exhibited M-1 whereby he was appointed as Badli sweeper. The Id. representative in support of his contentions has relied on (2000) 3 Supreme Court Cases 25 and AIR 1997 SC 3657.

I have reflected over the rival contentions and have scanned the record.

The workman's case is that he was employed as attender by the non-applicant management and he

discharged the work perennial to the work performed by the regular employees and he was paid the salary.

As against it, the stand adopted by the non-applicant is that vide letter Ex-M-1 the workman was appointed as Badli sweeper for a specific period on the contract basis and after expiry of the term of contract his service came to an end automatically and it does not amount to the retrenchment.

Now the question for consideration is as to whether the termination of the service of workman tantamounts to retrenchment or it falls within the scope and ambit under section 2(00)(bb) of the Act.

On behalf of the workman it has been sought to establish that he had worked from 1-9-1994 to 9-9-1999 with the management and had thus worked for more than 240 days in each year. In support of his contention the workman has placed on record the pay sheets exhibited W-1 to W-8 and salary details Ex-W-9 to W-11. The Pay sheets indicate the number of working days in the particular months and the rate of the wages paid to him viz. Ex-W-1 pay sheet shows that the workman had worked for full month in September, 1994 and thereafter vide Ex-W-2 he worked in the month of November, 1994 for 30 days and then in the month of January, 1995 vide Ex-W-3 he worked for 27 days. Thus, pay sheets Ex-W-1 to W-5 although exhibit that the workman was employed with the non-applicant management, yet they do not lead to a conclusion that he had worked continuously with the management. They only suggest that he was working with breaks with the non-applicant management. But, the pay sheets Ex. W-6 to W-9 disclose that he was continuously in employment of the non-applicant management from December, 1995 to March, 1997. In addition to it, Ex-W-9 to W-11, which are the details of the salaries paid to the workman in lieu of the work done by him, clearly indicate that he was continuously working with the non-applicant management from April, 1997 to October, 1999. Ex. W-9 to W-11 contain the details of the salary paid to the workman, namely, the basic pay, the DA, the HRA and the CCA which were drawn by the workman. It is alleged that with effect from 10-9-1999 the workman was disengaged by the management. Thus, in the preceding year to the termination of the workman, i.e. in the year of 1998 the workman had worked from January to December continuously with the non-applicant management and had drawn his salary of the each month therefrom. Thus, on the basis of these salary details he had completed for more than 240 days in the preceding year to his termination. This ground set up by the workman is, therefore, established on the basis of the documentary evidence.

To rebut the claim of the workman the non-applicant has placed on record the appointment letter Ex-M-1 dt. 25-10-1995 whereby he was appointed as a Badli

sweeper. But this appointment letter speaks of the period of his contractual employment commencing from 25-10-1995 to 18-11-1995, firstly this period does not pertain to the period in question and, secondly it could not be prayed by the management that this letter was received by the workman. Therefore, in my considered opinion, the non-applicant management could not be able to establish its case on the basis of this document that the workman was employed on contractual basis for a specific period and that after expiry of the contractual term his engagement came to an automatic end.

Now I advert to the oral evidence adduced by both the parties in this regard. The workman in his cross-examination has categorically deposed that the non-applicant bank had employed him verbally, it was Shri Anil Dandia who gave him the employment and he was drawing the salary of the full month. He has further disclosed that he performed his duties in the whole of the month and was declined to join the duty by the management verbally. Thus, his testimony is definite and positive and fortified by the documentary evidence led by him.

On behalf of the non-applicant the affidavit of MW-1 Shri Bhagchand has been filed, who has stated in his cross-examination that the workman was employed as part time sweeper, who is termed as badli sweeper, and who worked as a substitute to Murarilal, Attender. Although he has denied that the workman had never worked over 240 days in a year during 1998 to 1999, yet the management could not be able to rebut the documentary evidence led on behalf of the workman. Thus, the testimony of Shri Bhagchand is feeble and is not supported by the cogent evidence which becomes untrustworthy.

The Id. representative for the non-applicant in support of his contention has placed his reliance on 2002(3) SC Cases 25 and AIR 97 SC 3657.

In 2002(3) SC Cases 25 the workman could not be able to bring on record any documentary evidence to establish his claim that he had worked for more than 240 days. Therefore, the Hon'ble Court has observed as under :—

"In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or

order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

Obviously, the facts of this case are not applicable in the instant case since the workman has filed the documentary evidence in support of his submission that he had worked for more than 240 days.

In AIR 97 SC 3657 the observation made by the Hon'ble Court are quoted as below :—

"Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment", therefore, cannot be stretched to such an extent as to cover these employees."

In the case in hand, the workman has produced the documents that he had performed the work over 240 days with management in the preceding year to his termination and the non-applicant management could not be able to establish that it was a contractual employment only. In these circumstances, the facts of the referred case are distinct from the facts of the case in hand. Hence, the Id. representative does not find any assistance from the judicial verdicts supra.

On the basis of aforesaid facts, it is concluded that the workman had completed over 240 days with the management in the preceding year to his termination and his termination by the management amounts to retrenchment and it was violation of the provision under Section 25-F of the Act. Thus, both these points are clinched in favour of the workman and against the non-applicant management.

Point No. 2 :

The Id. representative for the management has argued that since it was a case of contractual employment, the applicant is not covered by the definition of the workman as defined under Section 2(S) of the Act. The Id. representative for the workman has sought to controvert this submission and has drawn my attention towards 2003 Lab. IC Raj. 528.

In 2003 Lab IC Raj. 528 the Hon'ble Court has held as below :—

"Since in the present case, the respondents No. 2 to 5 were engaged for performing the duties on part time basis, therefore, from every point of view, they should be termed as workman as defined in clause (s) of Section 2 of the Act of 1947."

In the light of the referred decision and the conclusion drawn at points No. 1 & 3, the applicant can safely be construed as the workman as defined under Section 2 (S) of the Act. This point, therefore, is decided against the management and in favour of the workman.

Point No. 4 :

On the basis of the aforesaid discussions the claim filed by the workman deserves to be allowed and he is entitled to be reinstated into the service. It appears from the cross-examination of the workman that he has no source of livelihood except depending upon the pension of his diseased father which is being drawn by his mother. Under these circumstances, it would be justified to grant him the 50% back wages.

Consequently, this reference is answered in the affirmative in favour of the workman and it is held the termination of service of the workman w.e.f. 9-9-1999 by the non-applicant management is not legal and justified. He is entitled to be reinstated into the service with 50% back wages and continuity of the service.

Let a copy of the award be sent to Central Government for publication under Section 17(1) of the Act.

R.C. SHARMA, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 2003

का. आ. 125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या आई.डी. 23/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-12-2003 को प्राप्त हुआ था।

[सं. एल. 12012/111/97-आई. आर. (बी. I)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 24th December, 2003

S.O. 125.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. 23/98) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 24-12-2003.

[No.L-12012/111/97-IR(B-I)]

N. P. KESAVAN, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM-LABOUR COURT, CHANDIGARH**

PRESIDING OFFICER : Shri S.M. Goel

Case No. ID 23/98

Hans Raj C/o The Asstt. Gen. Secretary,
SBI Staff Congress, Near Panchi Tent House,
Prem Nagar, Jail Road,
Rohtak.Applicant

Versus

The Asstt. General Manager,
SBI Zonal Office, Haryana,
Sector 8C, Chandigarh.Respondent

APPEARANCES

For the Workman : Shri J. G. Verma

For the Management : V.K. Sharma

AWARD

(Passed on 27-11-2003)

Central Government vide notification No. L-12012/111/97-IR(B-1) dated 21st of November 1998 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of SBI in terminating the services of Shri Hans Raj, Canteen Boy w.e.f. 1-6-1993 is just and legal ? If not, to what relief the workman is entitled to ?”

2. In the claim statement it is pleaded by the workman that he was employed by the Branch Manager H.A.U. Hissar as messenger to perform the duties of peon but he was given the designation of Canteen Boy @ Rs. 250 per month which was directly credited to the Saving Bank account of the workman. Later on the wages were increased to Rs. 500 per month. In his duties the preparation of tea and service thereof were added to the duties to the applicant. It is further pleaded by the workman that the applicant worked on the seat of messenger though designated as Canteen Boy and his services were terminated on 1-6-1993 without following the procedure as laid down U/s 25-F of the I.D. Act 1947. It is prayed that the termination be declared as illegal and the applicant may be reinstated with full back wages and other benefits.

3. In the written statement preliminary objection has been taken by the management that applicant is not a workman within the meaning of Section 2(s) of the I.D. Act 1947 as there was no privity of contract between the applicant and the management. The applicant was appointed by the Local Implementation Committee at the branch and the said activities are entirely independent of

the bank and this local implementation committee (referred to as LIC) looks after these activities and as the applicant was engaged by the aforesaid committee only and not by the bank as such the case against the bank is not maintainable. On merits it is pleaded that HAU Hissar branch paid a sum of Rs. 250 per month to the applicant from charge account inadvertently w.e.f. 1-6-1987 to 31-1-1990. Other contention of the applicant were denied by the management and the management prayed for the rejection of the reference.

4. In evidence the applicant filed his affidavit as Ex. W1 and also appeared as WWI for cross-examination. In rebuttal the management produced Shri Ram Lal who filed his affidavit Ex. M1 and documents Ex. M2 and M3.

5. I have heard the learned representatives of the parties and have gone through the evidence and record of the case.

6. The learned counsel for the workman has argued that though the workman was appointed as canteen boy yet he was performing the duties of messenger-cum-peon and he was also paid from the charge account and directly credited to the saving bank account of the workman. The applicant worked for more than 240 days with the bank management immediately proceeding to the date of his termination and the management while terminating the services of the workman has not complied with the mandatory provisions of Section 25-F of the I.D. Act 1947. On the other hand the learned rep. of the management has argued that the applicant was not the employee of the bank and he was appointed as canteen boy by the local implementation committee and bank has nothing to do with the appointment of the applicant. Regarding the payment made to the workman from the charge account, it is argued by the learned rep. of the management that the amount was inadvertently debited to the charge account and the mistake was corrected when it came to the notice of the bank. The local implementation committee has engaged the applicant which is social welfare activity of the bank towards their employees and subsidy is provided to the Local Implementation committee for running the canteen facility in the bank branches. The rep. of the management also referred me to the case reported in AIR 2000 S.C. 1518 State Bank of India and others Vs. State Bank of India Canteen Employees Union in which it has been held by the Hon'ble Supreme Court that employees of the canteens which are run at various branches by the LIC as per the welfare scheme framed by the SBI would not become employees of the bank as the bank is not having any statutory or contractual obligations arising under the Award to run such canteen.

7. I have gone through the arguments and case law referred to by the learned rep. of the parties. In my considered opinion, the applicant was appointed by the local implementation committee as canteen boy and the State Bank of India has no statutory obligation in view of

the judgement of the Hon'ble Supreme Court referred to above. The applicant is not the employee of the State Bank of India as he was never appointed/engaged by the management. The Argument of the learned counsel for the applicant that the applicant was paid from the charge account and thus he is the regular employee of the bank as the pay of the regular employees are debited from the charge account has no force as the applicant was not appointed by the bank and for recruitment of regular employees, there is set procedure to be followed by the bank management. Therefore, the applicant can not be considered to be the employee of bank.

8. In view of the discussions made in the earlier paras, there is no merit in the present reference and the same is answered against the workman. Central Govt. be informed.

Chandigarh,
27-11-2003

S. M. GOEL, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 2003

का. आ. 126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार डी० आर० एम०, नार्दन रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या आई.डी. 32/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-12-2003 को प्राप्त हुआ था।

[सं. एल.-41012/157/93-आई. आर. (बी. I)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 24th December, 2003

S.O. 126.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. 32/95) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of D.R.M. Northern Railway and their workman which was received by the Central Government on 24-12-2003.

[No. L-41012/157/93-IR(B-I)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER:

Shri S.M. Goel

Case No. ID 32/95

Shri Babu Lal, C/o. B.R. Prabhakar,
District President LMS,
63-C, Kailash Nagar, Model Town, Ambala City
...Applicant

* **Versus**

The D.R.M. Northern Railway,
Ambala Cantt.Respondent

APPEARANCES

For the Workman : Shri Dhani Ram
For the Management : Shri P. P. Khorana

AWARD

(Passed on 24-11-2003)

Central Govt. vide notification No. L-41012/157/93-IR(B) dated 3rd of May 1995 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management in terminating the services of Shri Babu Lal on finding him unfit in B.I. category after medical examination and not offering employment in any other category is justified ? If not, to what relief is the workman entitled ?"

2. Today the case was fixed for evidence of the workman. Rep. of the workman has made the statement that the workman does not want to pursue with the present reference and the same may be dismissed as withdrawn. In view of the above, the present reference is returned as withdrawn. Central Govt. be informed.

Chandigarh,
24-11-2003.

S. M. GOEL, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2003

का. आ. 127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एडमिनिस्ट्रेटिव कमांडर, साउदर्न कमांड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पुणे के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-2003 को प्राप्त हुआ था।

[सं. एल. 14011/7/2001-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 26th December, 2003

S.O. 127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Pune as shown in the Annexure, in the Industrial Dispute between the employers in relation to the

management of Administrative Commander, Southern Command and their workman, which was received by the Central Government on 26-12-2003.

[No. L-14011/7/2001-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE**BEFORE INDUSTRIAL TRIBUNAL, PUNE**

Reference (IT) No. 10/2001

BETWEEN

Administrative Commander,
Station Head Quarters,
Southern Command,
Pune Sub Area,
Pune.

...First Party

AND

Shri, Ajay Laxman Kore,
Sy. No. 31/3, At Post : Dhanori,
Vishrantwadi,
Pune-411 015.

...Second Party

In the matter of : Reinstatement with continuity
of service

Coram : Shri J. D. Deshpande, Industrial
Tribunal, Pune.

APPEARANCES :

Mrs. Sandhya Londhe, Asstt. Govt. Pleader for the
First Party.

Shri P. L. Patel, Union Representative for the Second
Party.

AWARD

1. This is a reference made by the Central Government under clause (d) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of the dispute between the Administrative Commander, Southern Command and Shri Ajay L. Kore over the demand of reinstatement with continuity of service, as mentioned in the schedule of the order of the reference.

2. Second party called. Not present. Prior to the last date the reference was fixed for dismissal orders. It appears that the Second Party workman has lost interest in prosecution of the reference. Hence, the reference is disposed off since demands are not substantiated.

Award accordingly.

Pune,

Dated : 6th November, 2003.

J. L. DESHPANDE, Industrial Tribunal

नई दिल्ली, 26 दिसम्बर, 2003

का. आ. 128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 16/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-2003 को प्राप्त हुआ था।

[सं. एल.-42011/40/93-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 26th December, 2003

S.O. 128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/95) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BBMB and their workmen, which was received by the Central Government on 26-12-2003.

[No. L-42011/40/93-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Presiding Officer : Shri S. M. Goel

CASE No. I.D. 16/95

Sh. Mehanga Ram, General Secretary, Nangal Bhakra Workers Union Regd. (AITUC), Kiln Area, Nangal.
.....Applicant.

V/S

The Chief Engineer,
Bhakra Beas Management Board (Irrigation Wing),
Nangal Township, Dist. RoparRespondent.

REPRESENTATIVES

FOR THE WORKMAN : None.

FOR THE MANAGEMENT : R. C. Attri.

AWARD

(Passed on 10th December, 2003)

The Central Govt. Ministry of Labour vide,
Notification No. L-42011/40/93-IR(DU) dated 16th Feb., 1995

has referred the following dispute to this Tribunal for adjudication :

"Whether the action of management of BBMB in treating one set of workmen within the same cadre working in the same establishment as industrial and other set of workmen as non-industrial on the basis of source of recruitment is justified ? If not, to what relief are the non-industrial workmen entitled to" ?

2. None appeared on behalf of the workmen despite notice. It appears that workmen are not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution. Central Govt. be informed.

Chandigarh.

S. M. GOEL, Presiding Officer

Dated 10-12-2003

नई दिल्ली, 26 दिसम्बर, 2003

का. आ. 129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 188/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-2003 को प्राप्त हुआ था।

[सं. एल.-40012/150/99-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 26th December, 2003

S.O. 129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 188/99) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 26-12-2003.

[No. L-40012/150/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Presiding Officer : Shri S. M. Goel

CASE No. I.D. 188/99

Jaswant Kumar son of Som Singh, VPO Sarheri,
District Ambala, (Haryana)Applicant.

Versus

The Chief General Manager, Telecom. Punjab Circle,
Sector-34, Chandigarh.Respondent.

APPEARANCES :

FOR THE WORKMAN : Shri Dhani Ram

FOR THE MANAGEMENT : Shri G. C. Babbar

AWARD

(PASSED ON 25-11-2003)

Central Govt. vide letter No. L-40012/150/99/IR (DU) dated 13th of September 1999 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of Chief General Manager, Punjab Circle, Telecom, Chandigarh in terminating the services of Shri Jaswant Kumar son of Shri Som Singh is legal and justified? If not, to what relief the workman is entitled?”

2. It is pleaded in the claim statement by the workman that he was employed in the office of respondent as frash cum-peon/sweeper since 10-5-1993 and continued up to 31-8-1997 and his services were terminated without assigning any reasons w.e.f. 1-9-1997. The management has not paid him any retrenchment compensation as provided under Section 25-F of the I.D. Act 1947. He has thus prayed that he be reinstated in service with continuity and backwages w.e.f. 1-9-1997.

3. In the written statement the plea taken by the management is that the applicant was not appointed as frash-cum-peon/sweeper but the applicant was engaged as contractor for upkeep and cleaning of the office. The tender/quotation of the applicant was accepted which was further extended from time to time and the applicant remained as a contractor with the management and when his contract expired his security deposit was refunded on his request. It is further pleaded that since the applicant was not engaged by the department on its rolls, the management is not liable to pay any retrenchment compensation to the workman and the claim is liable to be rejected. The management has thus prayed for the rejection of the reference.

4. Replication was also filed by the workman in which he has stated that he was not a registered contractor and he was working with the management in the capacity of engaged casual labourer and there was a relationship of master and servant.

5. In evidence the applicant filed his own affidavit Ex. M1. In rebuttal the management filed the affidavit of Shri B. M. Gupta as Ex-M3 and documents Ex M4 to M13. He has deposed in his cross-examination that he is now not aware whether the applicant was a licenced contractor and it is further deposed by him that the rates of the

applicant was quite high, therefore, his tender was not accepted.

6. I have heard the learned representatives of the parties and have gone through the evidence and record of the case. The plea of the workman was that he had served with the management for more than 240 days in one calendar year immediately preceding to the date of termination and at the time of termination no retrenchment compensation and notice or notice pay was given to him, thus the management has violated the mandatory provisions of Section 25-F of the I.D. Act 1947 and the applicant is entitled for reinstatement in service with full backwages. On the other hand the claim of the management is that the applicant was engaged as a contractor and later on when the rates of his tender were high he was not allowed the work as contractor and there exists no relationship of employer and employee. It is further contended that the applicant has also taken back his security deposit of Rs. 300 when he was not given the contract.

7. I have gone through the contentions of the rival parties. The applicant has not produced on record any document to support his claim. The management has produced as many as 13 documents showing the contract between the applicant and the management and the receipt of refund of security deposit. Ex. M3 is the letter written by the applicant that he is ready to do the work @Rs. 1800 per month as a contractor as he has still the safai work of the department as contractor Ex. M4 is the application of the applicant stating there in that as the work of contractor has ended so he may be refunded his security deposit. The management has also produced the copy of agreement Ex. M8 which also goes to show that the applicant was working as contractor with the department of the management. Therefore, it can not be assumed that he was working as a casual labourer with the department and in this situation, Section 25-F of the I.D. Act 1947 is not attracted. Thus the management is not liable to pay any retrenchment compensation or notice and notice pay to the applicant. I find no merit in the present reference and the same is answered against the workman holding that the action of the management in terminating the services of the applicant is justified and the workman is not entitled to any relief. Central Govt. be informed.

Chandigarh
25-11-2003

S.M. GOEL, Presiding Officer

नई दिल्ली, 29 दिसम्बर, 2003

का. आ. 130. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में निरदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,

चेन्नई के पंचाट (संदर्भ संख्या आई डी सं.-338/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-12-2003 को प्राप्त हुआ था।

[सं. एल.-12012/348/2000-आई. आर. (बी.-1)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 29th December, 2003

S.O. 130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No.-338/2001) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 29-12-2003.

[No.L-12012/348/2000-IR(B.I)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 11th November, 2003

PRESENT:

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 338/2001

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India, Chennai and their workman Sri G. Anburaja)

BETWEEN

Sri G. Anburaja : I Party/Workman

AND

The Assistant General Manager, : II Party/Management
Region IV,

State Bank of India, Chennai-1.

APPEARANCE:

For the Workman : M/s. Balan Haridas & R.
Kamatchi Sundaresan,
Advocates

For the Management : K. S. Sundar & R. Uma
Maheswari, Advocates

ORDER

The Central Government, Ministry of Labour vide Notification Order No. L-12012/348/2000-IR (B-1) dated 07-12-2000 has referred the following dispute to this Tribunal for adjudication :—

“Whether the dismissal of Shri G. Anburaja by the management of State Bank of India is legal and justified ? If not, to what relief is the workman entitled ?”

2. After the receipt of the reference, it was taken on file as I.D. No. 338/2001 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their respective Claim Statement and Counter Statement.

3. The averments of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner joined the services of State Bank of India during the year 1983 and from 1991, the Petitioner was working in Tiruvannamalai branch of the State Bank of India. While so, he was placed under suspension by an order dated 12-10-92 and was issued a chargesheet dated 26-12-92. The allegations in the charge memo are that the Petitioner had committed misconduct of misappropriation, forgery and making spurious entries in the bank's records resulting in financial loss to the bank. The Respondent conducted domestic enquiry. But the enquiry was conducted in a most unfair manner and the Petitioner was forced to admit the charges and the enquiry was not conducted in accordance with law and the Enquiry Officer has held three charges framed against the Petitioner have been proved and one charge has not been proved and it was forwarded to the Petitioner and also the Disciplinary Authority. The Petitioner has given a detailed submissions to the enquiry report. After issuing 2nd show cause notice, the Disciplinary Authority has differed with the findings of the Enquiry Officer held all the charges including the third charge are proved against the Petitioner and proposed punishment of dismissal from service without notice. Even the Petitioner in his representation to the Disciplinary Authority mentioned that he cannot possibly differ with the findings of the Enquiry Officer without putting him on notice. But the Disciplinary Authority without considering the valid objections raised by the Petitioner mechanically imposed the punishment of dismissal on 23-8-93. Even the Petitioner's appeal to the Deputy General Manager of the Respondent/Bank ended against him. Even though the Petitioner has written in his own handwriting, it was obtained by coercion by the Respondent/Bank authorities and the Petitioner was also forced to remit the alleged financial loss into the bank namely Rs. 1,10,600. Thus, the Petitioner is only mere a signatory to the proceedings which was conducted in a most unfair manner. The enquiry was

conducted in a great haste and it was conducted in a most hurried fashion. The Disciplinary Authority based on the findings which had been arrived at without any materials had imposed extreme punishment of dismissal vide order dated 23-8-93. The order of the Disciplinary Authority is illegal and is not a speaking order. The domestic enquiry conducted by the Respondent is against the principles of natural justice, fair play and it is further submitted that for the alleged misconduct, the punishment of dismissal is grossly disproportionate. Hence, the Petitioner prays that an award may be passed in his favour.

4. In the Counter Statement, the Respondent has alleged that the Petitioner was working as a Clerk/Cashier in the Respondent/Bank's branch at Tiruvannamalai. The allegation that the service of the Petitioner was sincere, efficient and utmost to the satisfaction is incorrect. He was placed under suspension by an order dated 12-10-92 for the acts of gross misconduct and the same was accepted by the Petitioner and proved and therefore, the Petitioner was dismissed from service. The proved charges are serious in nature. On various dates, the Petitioner has made spurious credit entries in S.B. Account No. 16564/107 in joint names of Smt. M. Maheswari and Sri G. Muthu with an intent to commit fraud on the bank. Further, he has made spurious entries in S.B. Account No. 204/3 in the name of his Mother Smt. G. Munirathinammal with an intent to commit fraud on the bank. Further, he has forged the initials of branch officials/Head Clerk to authenticate the spurious entries made in ledger accounts as detailed in charges 1 and 2 and out of the spurious credits afforded to S.B. A/c. No. 16564/107, the Petitioner has withdrawn a sum of Rs. 93,600 therefrom on various dates and misappropriated the same. Thus, the Petitioner has committed misappropriation, forgery and making spurious entries in bank's records resulting in financial loss which are prejudicial to the interest of the bank and gross misconduct under para 521.4(j) of Sastry Award. The Petitioner has accepted all the charges framed against him. As regard to charge No. 3, the Petitioner submitted that he had only put his signature for authentication and did not forge the other officials initials. In the enquiry, in the presence of the Petitioner all the documents were produced and marked as Ex. 1 to 35. By producing the above documents, it was clearly proved that the Petitioner as an employee of the Respondent/Bank had misused his position and made spurious credits and withdrew a sum of Rs. 1,10,600 and hence, it is an admitted case of the Petitioner that he has committed misconduct. The enquiry was conducted by observing the principles of natural justice and as provided under various Bipartite Settlements. The Petitioner participated in the enquiry and availed full opportunity and failed to prove his bona fides and the punishment awarded by the authority was appropriate and commensurate with the gravity of the misconducts. The Petitioner's appeal before the Appellate Authority was also

disposed of according to law. Therefore, the Respondent prays that the claim of the Petitioner has to be rejected.

5. At the outset, the learned counsel for the Petitioner has submitted that this Tribunal need not go into merits of their contentions, but only has to look into the issue—"whether an opportunity was provided by the Disciplinary Authority, in case of the Disciplinary Authority having disagreed with certain findings recorded by the Enquiry Officer?"

6. On the other hand the counsel for the Respondent argued that no prejudice would be caused to the Petitioner by not giving an opportunity to him by the Disciplinary Authority. He further argued that the other charges framed against the Petitioner have been clearly proved and it was admitted by the delinquent employee and therefore, it cannot be said that an opportunity was to be provided to him in such circumstances.

7. But, again on behalf of the Petitioner, it is contended that in a similar circumstances, the Supreme Court in the case of Punjab National Bank Vs. Kunj Behari Mishra reported in 1998 7 SCC 84 has clearly held that "*we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the Respondent delinquent, the order of dismissal could not be set aside by the court*" and as such at this juncture, it need not be shown before the Court what prejudice has been caused to the Petitioner by not giving an opportunity to the Petitioner by the Disciplinary Authority.

8. I find much force in the contention of the learned counsel for the Petitioner. Therefore, I frame the following issue as a Preliminary issue for consideration :—

"Whether an opportunity was to be provided in this case by the Disciplinary Authority, when the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer in respect of charge No. 3?"

9. In this case, on the side of the Petitioner Ex. W1 is marked namely written submissions filed by the delinquent employee before the Enquiry Officer and on the side of the Respondent/Management Ex. M1 to M11 namely enquiry proceedings were marked and no witnesses were examined on either side. The learned counsel for the Petitioner argued that out of the five charges framed against the Petitioner, the Enquiry Officer has held that four charges have been proved, since the Petitioner had admitted the same, but he has not discussed how the charges have been proved. Further, no copy of the documents alleged to have been marked in the enquiry have been given to the Petitioner and the list of witnesses was not given to the Petitioner. To make the matter worse, the Disciplinary Authority has held that the third charge (which the Enquiry Officer has held

as not proved) is proved without giving the Petitioner an opportunity before passing the order and this is in violation of principles of natural justice. It is his further contention that even though, it is held that the Petitioner has admitted other charges, the said admission is not a qualified admission, as the Petitioner has been forced to admit the charges. He further argued that any how the Disciplinary Authority must be given an opportunity to the Petitioner before coming to the conclusion that the third charge, which was held as not proved by the Enquiry Officer, is proved and he relied on the rulings reported in 1998 (8) Supreme To-day 129 Yoginath D. Vs. State of Maharashtra and also in the case of State Bank of India Vs. K. P. Narayan Kutty as reported in 2003 SCC (L & S) 185. In the first case, it is a case against a judicial officer wherein charges were framed against the Judicial Officer for corrupt practice. In that case, the Enquiry Officer has given a finding that the charges framed against the delinquent Judicial Officer have been proved. But, the Disciplinary Committee of the High Court disagreed with the finding and without giving an opportunity to the Judicial Officer has issued as show cause notice and dismissed him from service. In that case, the Supreme Court has held that "since the Disciplinary Committee did not give an opportunity of hearing to the Judicial Officer before taking the final decision in the matter relating to the findings on two charges framed against him (which were held as not proved by the Enquiry Officer), the principles of natural justice as laid down by the Three Judges Bench of Supreme Court in the case of Punjab National Bank and Others Vs. Kunj Behari Misra were violated." In the second case, a departmental enquiry was held against the Manager Grade I of State Bank of India in State Bank of India. In this case, the Enquiry Officer has held that some of the charges were proved and some were partially proved and remaining ones were not proved. In that case, the Disciplinary Authority has held the charges reported to be partly proved were rather fully proved and he has recommended dismissal of the officer from service and the delinquent approached the High Court and the High Court following the decision reported in 1998 7 SCC 84 in the case of Punjab National Bank and Others Vs. Kunj Behari Misra set aside the dismissal order on the ground that the Disciplinary Authority had not afforded an opportunity to the delinquent officer in respect of the charges on which it had not accepted the Enquiry Officer's findings. Against this, the management has filed an appeal before the Supreme Court and the Supreme Court dismissed the appeal following the ratio of judgement reported in 1998 7 SCC 84 in the case of Punjab National Bank and Others Vs. Kunj Behari Misra.

10. As against this, the learned Counsel for the Respondent argued that the above cited cases are distinguishable, in the sense, that delinquents in those cases have not admitted the charges, but on the other hand, in this case, the Petitioner delinquent employee has

admitted the charges framed against him and only against the third charge, he has made a conditional admission and in that the Enquiry Officer has held that the third charge has not been proved and as against this, the Disciplinary Authority has held that the above charge also has been proved. Further, in this case, no prejudice would be caused to the Petitioner by not giving an opportunity to the Petitioner before coming to such conclusion by the Disciplinary Authority.

11. Though I find some force in this contention, on consideration of the entire arguments on either side and also the rulings reported in 2003 SCC (L & S) 185 State Bank of India and Others Vs. K. P. Narayanan Kutty, I find there is no substance in the contention of the learned Counsel for the Respondent. In that case, a similar argument was advanced by the management namely State Bank of India, wherein the Supreme Court has held that "we find it difficult to accept the contention advanced on behalf of the appellants State Bank of India that unless it is shown that some prejudice was caused to the Respondent delinquent, the order of dismissal could not be set aside."

12. In view of the above, I find that this preliminary issue is to be answered in favour of the Petitioner. Therefore, I find the order of dismissal passed by the Respondent/Management State Bank of India against the Petitioner Sri G. Anburaja is to be set aside. Ordered accordingly. At the same time, liberty is given to the Respondent/Management State Bank of India to proceed with the case against the Petitioner Sri G. Anburaja in accordance with law.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 11th November, 2003).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

On either side : None

Documents Marked :

For the I Party/Workman :

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 14-05-93 | Xerox copy of the written submissions filed by Petitioner before the Enquiry Officer |

For the II Party/Management :

| Ex. No. | Date | Description |
|---------|----------|---------------------------------------|
| M1 | 12-10-92 | Xerox copy of the suspension order. |
| M2 | 26-10-92 | Xerox copy of the charge sheet |
| M3 | Nil | Xerox copy of the enquiry proceedings |

| | | |
|-----|----------|--|
| M4 | 24-05-93 | Xerox copy of the letter from Disciplinary Authority to Petitioner enclosing findings of Enquiry Officer |
| M5 | 09-06-93 | Xerox copy of the letter from Petitioner to Disciplinary Authority |
| M6 | 18-06-93 | Xerox copy of the letter from Disciplinary Authority To Petitioner |
| M7 | 16-07-93 | Xerox copy of the personal hearing proceedings before Disciplinary Authority |
| M8 | 23-08-93 | Xerox copy of the order of dismissal issued to Petitioner |
| M9 | 13-10-93 | Xerox copy of the letter from Petitioner to Appellate Authority |
| M10 | 31-12-93 | Xerox copy of the letter from Petitioner to Appellate Authority |
| M11 | 17-01-94 | Xerox copy of the order of Appellate Authority |

नई दिल्ली, 29 दिसम्बर, 2003

का. आ. 131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण व श्रम न्यायालय, अजमेर के पंचाट (संदर्भ संख्या आई डी सं.-10/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-12-2003 को प्राप्त हुआ था।

[सं. एल.-12012/69/97-आई. आर. (बी.-I)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 29th December, 2003

S.O. 131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No.-10/98) of the Industrial Tribunal/Labour Court, Ajmer now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Rural Gramin Bank and their workman, which was received by the Central Government on 29-12-2003.

[No. L-12012/69/97-IR(B.I)]

N.P. KESAVAN, Desk Officer

अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर (राज.)

पीठासीन अधिकारी : अतुल कुमार जैन, आर एच जे एस

प्रकरण संख्या—सी आई टी आर-10/98

(केंद्र सरकार का रेफरेंस पत्र क्र. एल-12012/69/97/आई आर/बी-1/ केंद्र सरकार नयी दिल्ली, दिनांक, 4-3-98)

हिम्मतसिंह पुत्र सुभा सांखला उम्र-33 वर्ष जाति-राजपूत निवासी-ग्राम व पोस्ट—जिला अजमेर (राज.) —प्रार्थी

बनाम

1. भीलवाड़ा अजमेर क्षेत्रीय ग्रामीण बैंक भीलवाड़ा जरिये अध्यक्ष
2. भीलवाड़ा अजमेर क्षेत्रीय ग्रामीण बैंक जरिये ब्रांच मैनेजर, पुष्कर (अजमेर) —अप्राथीगण

उपस्थित : श्री बी. डी. गुप्ता, एडवोकेट, प्रार्थी की ओर से।

श्री पी. डी. भार्गव, एडवोकेट, विपक्षीगण की ओर से।

दिनांक : 9-12-2003

अवाद

इस प्रकरण में केंद्र सरकार से प्राप्त श्रम विवाद (रेफरेंस) इस प्रकार था कि क्या विपक्षीगण द्वारा प्रार्थी हिम्मतसिंह को 21-2-94 से सेवा से पृथक करना उचित एवं वैधानिक था ? यदि नहीं तो प्रार्थी किस प्रकार से राहत पाने का अधिकारी है ?

रेफरेंस प्राप्त होने पर प्रार्थी हिम्मतसिंह ने अपना स्टेटमेंट ऑफ क्लेम दि. 23-3-98 पेश किया था। विपक्षीगण ने अपना जवाब दि. 18-9-98 को पेश किया था। क्लेम के समर्थन में प्रार्थी ने खुद का हलफनामा 3-6-2000 को पेश किया था तथा उससे विपक्षीगण के अधिवक्ता ने 19-5-01 को जिरह की थी। विपक्षीगण की ओर से गवाह टीकमचंद का हलफनामा 20-12-01 को पेश किया गया था तथा 25-01-02 को प्रार्थी पक्ष ने उससे जिरह की थी। विपक्षीगण के दूसरे गवाह सुभाषचंद्र गुप्ता का हलफनामा 27-3-02 को पेश हुआ था तथा उससे प्रार्थी पक्ष ने जिरह तीन टुकड़ों में क्रमशः 24-9-02, 12-3-03 तथा 28-5-03 को पूरी की थी।

विपक्षीगण ने अतिरिक्त साक्ष्य प्रस्तुत करने के लिए इस पत्रावली में सत्रह बार मोहलत लेने के बाद अद्वारहवीं बार 500 रु. खर्च पर मोहलत ली थी। इसके बावजूद भी दि. 19-7-03 को जब विपक्षीगण अपने बकाया गवाह पेश नहीं कर सके तो उस दिन विपक्षीगण की शहादत बंद की गयी थी। दि. 18-9-03 को प्रकरण में मैंने उभयपक्ष की मौखिक बहस सुनी थी। न्यायालय के अनुरोध पर प्रार्थी पक्ष ने अपनी मौखिक बहस का लिखित सारांश भी दि. 25-9-03 को पेश किया था जो पत्रावली में शामिल है। विपक्षीगण ने न्यायालय के अनुरोध पर भी अपनी मौखिक बहस का लिखित सारांश पेश नहीं किया है।

दस्तावेजी सबूत में प्रार्थी पक्ष की ओर से प्रदर्श डब्ल्यू. 1 लगाया डब्ल्यू. 6 तथा विपक्षीगण की ओर से प्रदर्श एम-1 लगाया एम-3 प्रदर्शित कराये गये हैं।

प्रार्थी का कहना है कि उसने विपक्षीगण के यहां 1-3-93 से 21-2-94 तक लगातार 240 दिन से अधिक समय तक एक वर्ष की अवधि में कार्य किया था। इसके बावजूद धारा 25 एफ.आई. डी. एक्ट, 1947 के प्रावधानों की अवहेलना करते हुए विपक्षीगण ने 21-2-94 से उसे अवैधानिक रूप से सेवा से पृथक कर दिया।

प्रार्थी ने अपने क्लेम के समर्थन में निम्न नज़ीरों का अवलंब लिया है :—

1. 1999 (2) डब्ल्यू एल सी राज. 592 प्रिंसिपल डूंगर कॉलेज/ओमप्रकाश आदि। इस नज़ीर में माननीय उच्च न्यायालय ने 240 दिन के सेवाकाल के आधार पर श्रमिक की सेवा बहाली का श्रम न्यायालय के निर्णय को बहाल रखा था।
2. 1999 (2) डब्ल्यू एल सी राज. 278 शिवदानसिंह/स्टेट ऑफ राज. इस नज़ीर में भी 240 दिन के सेवाकाल के आधार पर श्रमिक को दस हजार रुपये खर्चा दिलाते हुए सेवा में वापस लेने का आदेश माननीय उच्च न्यायालय ने दिया था।
3. 2002 (3) डी एन जे राज. 115 स्टेट ऑफ राज./महेंद्र जोशी आदि। इस नज़ीर में भी धारा 25 एफ एवं 25 जी आई. डी. एक्ट 1947 की अवहेलना का नियोजक को दोषी मानते हुए श्रमिक को बारह माह में 240 दिन के सेवाकाल के आधार पर सेवा में पुनः बहाल किया था।
4. 2000 (84) एफ एल आर इंदौर 410 इस नज़ीर में यह तय किया गया था कि सेवामुक्ति की प्रक्रिया सेवा करार में ही अंकित हो तब ही धारा 2 (00) (बी बी) आई. डी. एक्ट 1947 का लाभ नियोजक ले सकेगा।
5. 2000 (84) सुप्रीम कोर्ट एफ एल आर 364 मैनेजमेंट ऑफ एम सी डी/प्रेमचंद गुप्ता आदि। इस नज़ीर में माननीय सर्वोच्च न्यायालय ने 240 दिन के सेवाकाल का लाभ देते हुए नियोजक को धारा 25 एफ आई. डी. एक्ट 1947 के उल्लंघन का दोषी माना था तथा श्रमिक को पचास प्रतिशत बैंक वेजेज के साथ में सेवा में पुनः बहाल किया था।

हमारे विवेचन में हम उक्त नज़ीरों में वर्णित सिद्धांतों का पूर्ण सम्मान करेंगे।

स्टेटमेंट ऑफ क्लेम के पैरा 10.2 में प्रार्थी ने लिखाया है कि उसने विपक्षी के यहां 1-3-93 से 21-2-94 तक लगातार बिना किसी अवरोध के 240 दिन से अधिक कार्य किया है। पैरा 10.3 में उसने धारा 25 एफ आई. डी. एक्ट 1947 का उल्लंघन विपक्षीगण पर आरोपित किया है। विपक्षीगण ने उक्त पैरा का जवाब केवल मात्र यह दिया है कि प्रार्थी को नोटिस देने अथवा नोटिस की एवज में मुआवजा देने की वर्तमान प्रकरण में कोई आवश्यकता नहीं है क्योंकि धारा 25 एफ के प्रावधान प्रकरण में लागू नहीं होते हैं क्योंकि प्रार्थी को अप्रार्थी सं. 2 द्वारा छंटनी नहीं किया गया है एवं न ही यह छंटनी का मामला है। विपक्षीगण ने यह भी लिखाया है कि क्लेम के पैरा 10.2 गलत होने से स्वीकार्य है। विपक्षी ने क्लेम के पैरा सं. 3 के जवाब में लिखाया है कि वह स्वीकार करता है कि 2-4-93 से 21-2-94 की अवधि में प्रार्थी ने अप्रार्थी नं. 2 के अधीन शाखा में अस्थायी तौर पर दैनिक वेतन भोगी संदेशवाहक के रूप में कार्य किया था क्योंकि उस समय बैंक का नियमित कर्मचारी राजेंद्र कुमार तंवर निलंबित चल रहा था। इस बिंदु पर विपक्षीगण का स्वीकृत कथन भी सही मान लिया जावे तो भी 2-4-93 से 21-2-94

तक अर्थात् सेवामुक्ति के तुरंत पूर्व के एक वर्ष में प्रार्थी द्वारा विपक्षीगण के यहां 265 दिन कार्य करना प्रमाणित हो जाता है इसमें बैंक के अवकाश के दिनों की संख्या भी जोड़ी जावे तो अवकाश के इक्कसठ दिन जोड़ने पर यह संख्या 326 दिवस हो जाती है। इस प्रकार यह विपक्षी के एडमिशन से यह प्रमाणित हो जाता है कि सेवामुक्ति के तुरंत पूर्व की एक वर्ष की अवधि में प्रार्थी ने विपक्षी के यहां 240 दिन से अधिक समय तक अस्थायी तथा दैनिक वेतनभोगी कर्मचारी (संदेशवाहक) के रूप में कार्य किया था।

अब विपक्षीगण का कहना है कि प्रार्थी की नियुक्ति रीजनल रूरल बैंक्स (अपाइंटमेंट एंड ऑफिसर ऑफ अंदर एम्पलॉयी) रूल्स 1988 के तहत नहीं होने से वह नियमन का अधिकारी नहीं है। उल्लेखनीय है कि प्रार्थी ने अपनी सेवाओं को नियमित किये जाने की प्रार्थना नहीं की है। वरन् उसकी प्रार्थना तो यह है कि उसके पिछले समस्त बकाया वेतन लाभ परिलाभ सहित उसकी सेवा को निरंतर मानते हुए इस प्रकार पदस्थापित कराया जावे मानो कि उसे 21-2-94 को सेवामुक्त ही नहीं किया गया हो। इस प्रकार विपक्षीगण द्वारा उठाया गया यह प्रारंभिक तर्क भी बेमानी है।

विपक्षीगण का यह कहना है कि बैंक के अध्यक्ष ने प्रार्थी को न तो नियुक्त किया न सेवामुक्त किया। अतः उन्हें जिम्मेदारी से बरी किया जावे, भी बेमानी है क्योंकि विपक्षी नं. 2 द्वारा की गयी नियुक्ति या सेवामुक्ति के लिए विपक्षी नं. 1 भी समान रूप से जिम्मेदार है।

विपक्षीगण का एक तर्क यह है कि बैंक उद्योग की परिभाषा में नहीं आता है तथा प्रार्थी श्रमिक की परिभाषा में नहीं आता है। इस संबंध में प्रार्थी पक्ष द्वारा 1985 आर एल आर पेज 365 फूलचंद/राज. राज्य की नज़ीर का हवाला देते हुए तर्क दिया गया है कि बैंक कर्मचारियों को माननीय राज. उच्च न्यायालय ने औद्योगिक विवाद अधि. 1947 का लाभ दिया जाना उचित माना है। इस प्रकार विपक्षीगण का यह तर्क भी बेमानी है।

विपक्षीगण का मुख्य तर्क यह है कि इस प्रकरण में आई. डी. एक्ट 1947 की धारा 2 (00) (बी बी) लागू होती है जिसके अनुसार वह टर्मिनेशन रिट्रिब्यूटमेंट नहीं माना जायगा जब किसी वर्कमैन की सेवायें किसी कांटेक्ट के तहत टर्मिनेट की गयी हों और इस संबंध में कांटेक्ट में ही स्टीप्यूलेशन में रखा गया हो अर्थात् किसी कर्मकार को फिक्सड टर्म के लिए कांटेक्ट बेसिस पर नौकरी पर रखा गया हो तथा कांटेक्ट अवधि पूरी होने पर उसे सेवा से निकाल दिया गया हो तो वह धारा 25 एफ के प्रावधानों की संरक्षा नहीं ले सकेगा। वर्तमान प्रकरण में विपक्षीगण का उक्त तर्क भी स्वीकार किये जाने योग्य नहीं है क्योंकि प्रार्थी का ऐसा कोई अपाइंटमेंट लैटर विपक्षीगण ने पेश नहीं किया है जिसमें उसे फिक्सड टर्म अपाइंटमेंट दिया गया हो। विपक्षीगण के स्याई कर्मचारी के निलंबन की वजह से प्रार्थी को नौकरी पर रखा गया था उसे डेली वेजेज पर रखा गया था। समय-समय पर उसका कार्यकाल बढ़ाया गया था ऐसी सूझ में प्रार्थी के मामले पर धारा 2(00)(बी बी) लागू नहीं होती है और प्रार्थी धारा 25 एफ औद्योगिक विवाद अधिनियम 1947 के प्रावधानों का उल्लंघन विपक्षीगण द्वारा किये जाने की वजह से सेवा में पुनः बहाली का हकदार है।

इस संबंध में मैंने प्रार्थी पक्ष द्वारा पेश की गयी चौदह टाईपशुदा पृष्ठों की लिखित बहस (मौखिक बहस का सारांश) का भी अवलोकन किया तथा उभयपक्ष के दस्तावेजात् का भी अवलोकन किया। प्रदर्श डब.4 विपक्षी बैंक के अध्यक्ष के पत्र की एडमिटेड फोटो कॉपी है इसमें विपक्षी ने स्वीकार किया है कि प्रार्थी को पूर्णतया अस्थायी दैनिक वेतन-भोगी के आधार पर बगैर नियुक्ति पत्र दिये कार्य पर रखा गया था तथा उसे भुगतान दैनिक अनुपातिक आधार पर किया गया था तथा वह प्रतिदिन एक दो घंटे सफाई करने, पानी भरने आदि का कार्य किया करता था। विपक्षीगण ने एक तर्क यह उठाने की कोशिश की है कि प्रार्थी उनके यहां पार्ट-टाईम कर्मचारी था लेकिन उल्लेखनीय है कि क्लेम के जवाब में विपक्षीगण ने प्रार्थी को कहीं भी अपना पार्टटाईम कर्मचारी होना नहीं बताया था। जाहिर है कि जिम्मेदारी से बचने के लिए विपक्षीगण ने पार्टटाईम कर्मचारी बाबत तर्क मनगढ़ंत व "ऑफ्टर थॉट" रूप से उठाये हैं। प्रार्थी को नित्य कार्य के लिए 22 रु. प्रतिदिन दिया जाना, विपक्षीगण ने विवादित नहीं किया है। वैसे भी न्यूनतम वेतन अधिनियम के तहत उन दिनों पूरे दिन की मजदूरी 22 रु. होती थी। विपक्षी प्रार्थी को पूरे दिन की मजदूरी देकर उससे केवल एक या दो घंटे कार्य लेता था तो इसके लिए विपक्षी स्वयं जिम्मेवार है तथा विपक्षी की गलती का खमियाजा प्रार्थी नहीं भुगत सकता है।

विपक्षीगण का अंतिम तर्क यह है कि प्रार्थी को वर्ष 1994 में सेवा से पृथक् कर दिया गया था तथा उसका रेफरेंस 1998 में प्राप्त हुआ है। विपक्षीगण का कहना है कि प्रार्थी का क्लेम तीन वर्ष से अधिक होने के कारण मियाद बाहर जाकर इसी आधार पर खारिज कर दिया जावे। विपक्षीगण का यह तर्क भी बेमानी है केंद्र सरकार ने रेफरेंस भेजने में विलंब किया तो इसके लिए प्रार्थी को जिम्मेवार नहीं माना जा सकता है। प्रार्थी ने समझौता अधिकारी के यहां दि. नवंबर 1996 में ही कार्यवाही प्रारंभ कर दी थी। समझौता अधिकारी के यहां से असफल वार्ता प्रतिवेदन भेजने में तथा केंद्र सरकार से रेफरेंस प्राप्त होने में यदि विलंब हुआ है तो इसके लिए प्रार्थी को जिम्मेवार नहीं माना जा सकता है।

हमारा उक्त संपूर्ण विवेचन ए डब्ल्यू-1 हिम्मतसिंह प्रार्थी के बयानों व जिरह से तथा एन ए डब्ल्यू-1 टीकमचंद छीपा तथा एन ए डब्ल्यू-2 सुभाषचंद्र गुप्ता के बयानों एवं जिरह से भी पूरी तरह युक्तिसंगत होना प्रमाणित होता है। उभयपक्ष द्वारा पेश किये गये दस्तावेजात् के सबूत भी हमारे विवेचन को प्रतिकूल रूप से प्रभावित नहीं करते हैं।

परिणामतः इस प्रकरण में अवार्ड इस प्रकार पारित किया जाता है कि प्रार्थी हिम्मतसिंह का यह क्लेम स्वीकार किये जाने योग्य है जो एतद्वारा स्वीकार किया जाकर आदेश दिया जाता है कि विपक्षीगण ने प्रार्थी हिम्मतसिंह को अस्थायी संदेशवाहक दैनिक वेतनभोगी कर्मचारी के कार्य से 21-2-94 को अवैधानिक रूप से हटाया है तथा उसे सेवा से हटाने से पूर्व विपक्षीगण ने धारा 25 एफ औद्योगिक विवाद अधि. के प्रावधानों की पालना नहीं की है। विपक्षीगण द्वारा किया गया उक्त टर्मिनेशन आदेश अवैध, शून्य एवं गैरकानूनी है जो एतद्वारा निरस्त किया जाता है। प्रार्थी फुल बैंक वेजेज के साथ पूर्ववर्ती शर्तों पर पुनः विपक्षी की सेवा में आने का अधिकारी है। समय-समय पर लागू होने वाले अनस्किल्ड लेबर के मिनिमम वेजेज विपक्षीगण से प्राप्त करने का प्रार्थी अधिकारी रहेगा। औद्योगिक विवाद अधि. के प्रावधानों की पूर्ण पालना करने के उपरान्त विपक्षीगण चाहे तो प्रार्थी हिम्मतसिंह को पुनः नियमानुसार रिट्रेंचमेंट करने के लिए स्वतंत्र रहेगा। प्रार्थी से अपेक्षा की जाती है कि वह इस अवार्ड के गजट प्रकाशन से एक माह के भीतर

विपक्षी बैंक के अध्यक्ष के कार्यालय में अपनी उपस्थिति देवे तथा उसकी सूचना विपक्षीगण के वकील श्री वी. डी. भार्गव को भी रजिस्टर्ड डाक से उसी दिन प्रेषित कर देवे।

अतुल कुमार जैन, न्यायाधीश

नई दिल्ली, 30 दिसम्बर, 2003

का. आ. 132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17-के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 731/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-12-2003 को प्राप्त हुआ था।

[सं. एल. 12012/170/99-आई. आर. (बी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th December, 2003

S.O. 132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. 731/2001 of the Central Government. Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 29-12-2003.

[No. L-12012/170/99-IR (B-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 12th November, 2003

PRESENT:

K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE No. 731/2001

(Tamil Nadu Principal Labour Court CGID No. 381/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workmen]

BETWEEN:

The General Secretary : I Party/Claimant
Indian Bank Employees
Union.

AND

The General Manager, : II Party/Management
Indian Bank, R.O.,
Chennai.

APPEARANCE:

- For the Claimant : Mr. K. J. Arunachalam,
Authorised Representative.
- For the Management : M/s. Aiyar & Dolia,
Sri N. Krishnakumar,
Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification No. L-12012/170/99/IR(B-II) dated 11-11-1999 has earlier referred this industrial dispute to Tamil Nadu Principal Labour Court, Chennai for adjudication. The Tamil Nadu Principal Labour Court has taken the same on its file as I. D. No. 381/99 and after the constitution of this Central Govt. Industrial Tribunal-cum-Labour Court, the said industrial dispute was transferred to this Tribunal and on receipt of the records, it was numbered as I. D. No. 731/2001. The dispute referred by the Govt. in the Schedule is hereunder :—

“Whether the action of the management of Indian Bank in terminating the service of the workman Sri P. Velu is justified? If not, what relief is he entitled?”

2. After numbering the industrial dispute, this Court has issued notices to both sides and both the parties entered appearance through their authorised representative and advocate respectively and they have filed their respective statements. On the side of the I Party, the concerned workman was examined as WW1 and 18 documents were marked as Ex. W1 to W18 and on the side of the II Party/Management no one was examined as a witness and 6 documents alone were marked as Ex. M1 to M6.

3. The allegations made in the Claim Statement of the Petitioner Union are as follows :—

The Petitioner Union raised this dispute espousing the cause of the concerned workman Sri P. Velu, who was initially engaged as a temporary sub-staff on 20-10-89 at Ramapuram branch of the Respondent/Bank. He was continuously engaged as such till the date of his termination on 06-02-1998 and he worked for a total number of 1810 days. Therefore, the concerned workman's claim is well within the purview of subsisting legally binding settlement arrived at under the provisions of Industrial Disputes Act, 1947 in the matter of regularisation of temporary employees into permanent sub-staff cadre. Therefore, the termination of service of the concerned employee amounts to retrenchment and non-compliance of Section 25F of the Industrial Disputes Act, 1947, and therefore, it vitiates the order of termination.

Therefore, the termination of the services of Sri P. Velu without notice is in violation of para 522(4) of Sastry Award. Hence, the Petitioner Union prays that an Award may be passed in favour of the concerned employee Sri P. Velu.

4. In answer to this statement, the Respondent/Management in their Counter Statement contended that the engagement of the concerned employee was only on day-to-day basis/casual basis and that too without the permission and approval of the competent authority and against the existing selection procedure/guidelines. The concerned employee was never kept in the panel of temporary sub-staff. The procedure to be followed for empanelment of temporary sub-staff is : (i) that he should be sponsored through Employment Exchange irrespective of the nature and duration of engagement; (ii) he should possess requisite educational qualification; (iii) he should be minimum of 18 years and not exceeding 23 years of age; (iv) he should be selected by an interview committee at Regional level; and (v) that selection should be approved by Zonal level. It is not true to say that the concerned employee worked more than 1082 days. Even assuming that he has worked, it has no relevance and the same will not confer any right to the employee. It is false to allege that Section 25F attracted in this case. Further, Sastry Award has no application in this case. Hence, the Respondent prays that the claim is to be dismissed with costs.

5. Again, the Petitioner Union in the rejoinder statement has contended as follows :—

The Respondent/Management after having engaged the services of the concerned workman against the permanent vacancy, cannot now contend that his engagement was not approved by the competent authority. Even after various circulars issued by the Govt. the management entered into a settlement with the Union with respect to temporary sub-staff empanelment, thereby agreed to waive the sponsorship through Employment Exchange. Therefore, the Respondent is estopped from contending that the concerned workman was not sponsored through Employment Exchange. Therefore, for all these reasons, the Petitioner Union contended that the action of the Respondent/Bank in disengaging the concerned employee is clearly illegal and pray that this claim may be allowed.

6. In these circumstances, the points for determination in this case are as follows :—

- (i) “Whether the action of the management of Indian Bank in terminating/discontinuing the services of Sri P. Velu is legal and justified?”
- (ii) “To what relief the concerned workman is entitled?”

Point No. 1 :

7. In this case, the contention of the Petitioner Union, which has espoused the cause of the concerned workman Sri P. Velu is that after having engaged the services of Sri P. Velu as sub-staff from 20-10-1989, the Respondent/Bank cannot now contend that his engagement was not approved by the competent authority, not legal and so on. Further, it is the contention of the Petitioner Union that Sri P. Velu was engaged continuously from 20-10-1989 and he has worked in the Respondent/Bank for more than 1810 days. He was paid wages for that period and therefore, his services were regular in nature and not to meet the exigencies of the bank of any particular period as alleged by the Respondent/Bank. To substantiate their claim, on behalf of the Petitioner Union eighteen documents namely Ex. W1 to W18 were marked and the concerned employee was examined as WW1. Ex. W6, W8, W9 and W17 are the particulars of temporary engagement of Sri P. Velu in the Respondent/Bank branch. Ex. W1 and W5 are the list of temporary sub-staff as on 31-12-89 and 31-12-92 in the Ramapuram branch. Ex. W2 is the seniority list of the temporary sub-staff as on 31-12-91. Ex. W3 and W4 are the letter of Ramapuram branch and application of Sri P. Velu respectively sent to the Central Office. Ex. W7 is the copy of letter from Ramapuram branch to the Regional Office of the Respondent/Bank. Ex. W10 and W16 are the copies of the vouchers for wages paid to Sri P. Velu. Ex. W18 is the details with particulars of days of engagement of Sri P. Velu from 20-11-89 to 22-1-98. It is contended on behalf of the Petitioner that the concerned employee was examined as WW1 and he has produced documents Ex. W1 to W18 and as against his oral and documentary evidence, the Respondent/Bank has not let in any contra evidence except the circulars issued by the Central Govt. and also the circulars issued by the Zonal Office to Respondent/Bank branches. It is the further contention of the Petitioner that the Respondent/Bank in all the cases contended that the temporary employee was not sponsored by the Employment Exchange and he is trying to get into the bank at back door entry and this should not be allowed to contend because the very engagement of the concerned temporary staff was by the Respondent/Bank officers' and they after utilising the services of the concerned workman cannot turn around and say that his engagement is not sponsored by Employment Exchange or not approved by the concerned authorities. Further, on behalf of the Petitioner, it was contended that item 10 of the Schedule 5 of the Industrial Disputes Act, 1947 categorically states that to employ workmen as casuals for years with an object to depriving them as status of permanent workmen is an unfair labour practice and therefore, the Respondent/Bank in this case committed an unfair labour practice as enshrined in the Schedule 5 of the Industrial Disputes Act, 1947 and therefore, their contention should not be allowed.

8. On behalf of the Respondent/Management, it is contended that it is false to allege that Sri P. Velu was engaged as temporary sub-staff from 20-10-89 at Ramapuram branch. On the other hand, his engagement was on needs and intermittently on casual basis. Further, his engagement was only on day-to-day/casual basis and that too by the Branch Manager of Ramapuram branch without any permission and approval of the competent authority. It is the further contention of the Respondent that the Respondent/Bank was maintaining a panel of temporary employees list and whenever any leave vacancy arises, persons from the temporary panel was engaged, but the said Sri P. Velu was never in the said panel and therefore, he cannot claim any right for permanent appointment. On behalf of the Respondent, it is contended that the Central Govt. under whose control the Respondent/Bank is functioning has issued circulars that no person should be engaged irrespective of the capacity either permanent or temporary without being duly sponsored by Employment Exchange and to establish this fact, they have filed five documents which were marked as Ex. M1 to M6. Ex. M1 and M3 are Government of India instructions issued on 30-09-78 and 16-08-90 respectively. Ex. M5 is the RBI instructions issued on 26-06-1996. It is the further contention of the Respondent that a settlement was entered into between the Petitioner Union and the management of Respondent/Bank on 6-7-92 with regard to temporary/casual employees engaged in the leave vacancies and the copy of the said settlement was marked as Ex. M4 and that settlement pertains to those such casual employees employed more than 90 days during the period between 1-1-82 and 31-12-89 as one time measure and for a specific purpose and specific period of time. In this case, the concerned employee namely Sri P. Velu had not worked more than 90 days from the date of his initial employment i.e. 20-10-89 during 1-1-82 to 31-12-89 and therefore, Sri P. Velu is not eligible to be included in the empanelment of the temporary employee and they further contended that initial appointment of Sri P. Velu itself was unauthorised without permission of the concerned authorities and therefore, his temporary appointment is by backdoor entrance and therefore, he cannot be made permanent. For this, they relied on 1999 II LLJ 1173 in the case of Calcutta Tramways Company (1978) Ltd. & Ors. Vs. Ramesh and 17 Others and another Authority reported in 2003 II LLJ 948 Union of India Vs. Lekh Raj and Others, wherein, it was observed that "*appointment to a permanent service must be made in terms of recruitment rules. For that purpose, there must existence of the vacancy. A person appointed through backdoor i.e. not in conformity with the rules could not claim permanency in service if the initial appointment was illegal on account of not following the procedure for appointment, the incumbent obtaining appointment without following the procedure cannot claim as a matter of right to be regularised.*" Further, the Respondent placed reliance in the case reported

in 1997 II LLJ 331 Union of India Vs. Bishamber Dutt, wherein the Hon'ble Supreme Court has held that "unless a person is appointment on regular basis according to rules after consideration of the claims on merits, there is no question of regularisation of his service." Further, they have relied on the judgement of Hon'ble Supreme Court reported in AIR 1994 SC 1638 in the case of Madhyamik Siksha Parishad U.P. Vs. Anil Kumar Mishra & Others as reported in AIR 1994 SC 1638, wherein the Supreme Court has held that "..... there were, no sanctioned posts in existence to which they could be said to have been appointed. The assignment was on ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of provisions of Industrial Disputes Act, 1947 importing the incidents of completing of 240 days work..... the completion of 240 days work does not under that law import the right to regularisation."

Therefore, it is argued on behalf of the Respondent that to regularise a temporary staff, it should be only according to rules and regulations.

9. But, on the other hand, on behalf of the Petitioner, it is contended that it is not correct to say that Sri P. Velu was engaged intermittently and for need based situations, but he was engaged continuously in Ramapuram branch of the Respondent/Bank and further, the Respondent/Bank having utilised the services of Sri P. Velu for a long and continuous period they are now estopped from contending that Sri P. Velu was not sponsored by the Employment Exchange or that he did not undergo the selection process as contemplated under the rules and regulations. It is the further contention of the Petitioner Union that even after the so-called circulars of the Govt., the bank has entered into settlement with the workmen as per the Industrial Disputes Act under Section 12(3) for the engagement of various sub-staff in the respondent/bank. Therefore, it is futile to contend that no temporary sub-staff can be regularised, who were not sponsored by the Employment Exchange.

10. But, I find there is no substance in the contention of the Petitioner Union because even in Ex. M4, it is mentioned that it was mutually agreed by the Union and also the Management to consider those persons, who were engaged more than 90 days without being sponsored by Employment Exchange worked during the period of 1-1-82 to 31-12-89 as a one time measure and therefore, in pursuant to the Govt. guidelines to Public Sector Banks, the Respondent/Bank is not entitled to appoint a person, who worked as casual on regular basis. Further, the Government of India through its circulars clearly stated that no person should be appointed to any post in a nationalised bank not be sponsored through Employment Exchange. In this case, the Petitioner Union has not shown that such temporary employment was made by any settlement or such

temporary employees are entitled to be regularised by mutual agreement. Under such circumstances, it cannot be contended that the temporary appointment of Sri P. Velu can be regularised by the Respondent/Management. Further, the decisions relied on by the Respondent clearly stated that such temporary employment are illegal and they cannot be regularised as they requested. Therefore, the concerned employee, Sri P. Velu, who worked as a casual worker, has no right to claim permanent employment, through he worked for a long period intermittently. In view of the above, I find this point against the Petitioner Union.

11. The next point to be decided in this case is to what relief the concerned workman is entitled?

In view of the above, the action of the management in not regularising the services of the concerned employee, Sri P. Velu, is legal. Hence, I find the concerned employee, Sri P. Velu, is not entitled to any relief. Ordered accordingly. No costs.

12. Thus, the reference is answered accordingly.

(Dictated to the P.A. as written and typed by him, corrected and pronounced by me in the open court on this day the 12th November, 2003.)

Witness Examined :

For the I Party/Claimant : WW1 Sri P. Velu

For the II Party/Management : None

Documents Marked :

For the I Party/Claimant :

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 10-11-90 | Xerox copy of the list of temporary sub-staff as on 31-12-89 submitted by Ramapuram branch. |
| W2 | 09-03-92 | Xerox copy of the seniority list of sub-staff submitted by Ramapuram branch. |
| W3 | 12-11-92 | Xerox copy of the letter from Ramapuram branch to Central Office enclosing application for inclusion of the Name of Petitioner in the panel. |
| W4 | 12-11-92 | Xerox copy of the application of concerned workman. |
| W5 | 15-07-93 | Xerox copy of the details of temporary sub-staff as on 31-12-92 submitted by Ramapuram branch. |

| | | |
|-----|----------|---|
| W6 | Nil | Xerox copy of the statement showing engagement details of concerned workman including the wages paid to him. |
| W7 | 10-07-92 | Xerox copy of the letter of Ramapuram branch to Regional Manager Kancheepuram regarding engagement of concerned workman. |
| W8 | 24-11-93 | Xerox copy of the service certificate issued to concerned workman by Branch Manager, Ramapuram. |
| W9 | 08-02-99 | Xerox copy of the service certificate issued to concerned workman by Branch Manager, Ramapuram. |
| W10 | 02-12-89 | Xerox copy of the cash voucher of Ramapuram branch regarding payment of wages to concerned workman. |
| W11 | 02-06-90 | Xerox copy of the cash voucher of Ramapuram branch regarding payment of wages to concerned workman. |
| W12 | 05-06-90 | Xerox copy of the cash voucher of Ramapuram branch regarding payment of wages to concerned workman. |
| W13 | 02-11-93 | Xerox copy of the cash voucher of Ramapuram branch regarding payment of wages to concerned workman. |
| W14 | 27-11-93 | Xerox copy of the cash voucher of Ramapuram branch regarding payment of wages to concerned workman. |
| W15 | 01-06-95 | Xerox copy of the cash voucher of Ramapuram branch regarding payment of wages to concerned workman. |
| W16 | 26-05-95 | Xerox copy of the cash voucher of Ramapuram branch regarding payment of wages to concerned workman. |
| W17 | Nil | Xerox copy of the statement showing engagement details of concerned workman from January 1995 with details of wages paid. |

| | | |
|-----|-----|--|
| W18 | Nil | Xerox copy of the statement showing particulars with regard to engagement of concerned workman from 20-11-89 to 22-1-98. |
|-----|-----|--|

For the II Party/Management :

| Ex. No. | Date | Description |
|---------|----------|---|
| M1 | 30-09-78 | Xerox copy of the letter from Ministry of Finance to all the Heads of Banks and financial institutions regarding recruitment of sub-staff in public sector banks. |
| M2 | 04-03-83 | Xerox copy of the circular issued by Personnel Deptt. to all branches of Indian Bank regarding engagement of persons during leave vacancies of sub-staff. |
| M3 | 16-08-90 | Xerox copy of the letter from Ministry of Finance to all the Chief Executives of Banks regarding recruitment and absorption of temporary sub-staff in public sector banks. |
| M4 | 06-07-92 | Xerox copy of the memorandum of settlement under Section 12(3) entered into between the Respondent/Management and Petitioner Union regarding persons engaged in leave vacancies of sub-staff. |
| M5 | 26-06-96 | Xerox copy of the letter issued by Reserve Bank of India to the Chairman, Indian Bank regarding achievement of capital adequacy ratio of 8 per cent. |
| M6 | 11-11-98 | Xerox copy of the letter from Ramapuram branch to Zonal Office, Vellore furnishing the details with regard to the concerned workman. |

नई दिल्ली, 30 दिसम्बर, 2003

का. अ. 133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधन के संबंध निबंधकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 37/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-12-2003 को प्राप्त हुआ था।

[सं. एल. 12011/229/2001-आई. आर. (बी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th December, 2003

S.O. 133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. 37/2002 of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 29-12-2003.

[No. L-12011/229/2001-IR (B-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 20th November, 2003

PRESENT:

K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE No. 37/2002

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Syndicate Bank and their workmen]

BETWEEN:

The President, : I Party/Claimant
Syndicate Bank Employees
Union, Chennai

AND

The Deputy General : II Party/Management
Manager,
Z.O., Syndicate Bank,
Chennai.

Appearances:

For the Claimant : M/s. R. Gomathi & P.
Manimeghalai, Advocates.

For the Management : M/s. T.S. Gopalan & Co.,
Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-12011/229/2001/IR(B-II) dated 20-3-2002 has referred the following dispute to this Tribunal for adjudication:—

“Whether the action of the management of Syndicate Bank, Chennai is legal and justified in imposition of

the punishment of reduction in basic pay by two stages for two years to Smt. Vanmathi Jayascelan, Clerk, Purasavalkam branch vide order dated 5-2-2000? If not, what relief the workman is entitled to?”

2. After the receipt of the reference, the Tribunal has numbered the same as I. D. No. 37/2002 and issued notices to both the parties and both the parties entered through their advocates and filed their respective Claim Statement and Counter Statement.

3. The allegations of the Petitioner Union in the Claim Statement are briefly as follows:—

Smt. Vanmathi Jayascelan, the charge sheeted employee was working as a clerk in Purasavalkam branch of the Respondent/Bank. On 5-1-1999, she was charge sheeted with the charge that she has committed a gross misconduct on doing acts prejudicial to the interest of the bank and the concerned employee has submitted her explanation, but her explanation was not accepted and a departmental enquiry was ordered. After the enquiry, the Enquiry Officer has submitted his report stating that the charges framed against the concerned employee were proved. Then the Disciplinary Authority, without considering the submissions made by the concerned employee has proposed the punishment of reduction in basic pay by two stages for two years. Again, the Disciplinary Authority, without considering the submissions made by the concerned employee has imposed the said punishment on 15-2-2000. Even, the appeal preferred against the said order was dismissed by the Appellate Authority on 20-5-2000. The finding of the Enquiry Officer is vitiated and it is a biased one. He has not considered the various contradictions in the evidence given by management witnesses with regard to timings of the occurrence. Further, he has not given the consideration with regard to the evidence of the defence witnesses which establish the vindictive attitude of the Branch Manager and his colleagues against the concerned employee. The punishment imposed by the Disciplinary Authority is highly disproportionate and harsh and it was imposed only with a view to dissuade and discourage ladies from taking active part in the trade union activities. The order of the Appellate Authority is mechanical in not applying his mind. Hence, the Petitioner Union prays that an award may be passed in favour of the concerned employee.

4. As against this, the Respondent in its Counter Statement alleged that the issue in this case is for about justification of imposition of punishment against an individual employee and it forms a subject matter of the dispute under section 2(k) of the Industrial Disputes Act.

Therefore, the Petitioner Union is to establish that it has been duly authorised to take up the cause of the concerned individual employee and raise an industrial dispute. The charge sheet was issued to the concerned employee for her gross interference in the branch administration and her highhanded behaviour. The domestic enquiry was conducted in a fair and just manner and the findings of the Enquiry Officer are supported by adequate evidence. The order of the Appellate Authority cannot be said to be vitiated for any of the reasons urged by the Petitioner. When the incident has not been disputed, the variation in timings is of no consequence. The present case would not be governed by Section 11A of the Industrial Disputes Act. Hence, the Tribunal has no jurisdiction to interfere with the punishment on the ground that the punishment is disproportionate to the charges proved. Further, the Tribunal can interfere with the findings of the Enquiry Officer only if the findings are perverse in the sense that they are wholly unsupported by any evidence. It is not open to the Petitioner in this case to invite this Tribunal to re-appreciate the evidence and take a different view from that of the Enquiry Officer. The conduct of the concerned employee in unauthorisedly attending the meeting would amount to interference with the administration of the branch and it is not necessary that her presence in the meeting should have created any disturbance. Hence, the Respondent prays that the claim may be dismissed.

5. Under such circumstances, the points for my consideration are :—

- (i) "Whether the action of the management of Syndicate Bank is legal and justified in imposition of punishment of reduction in basic pay by two stages for two years on the concerned employee vide order dated 5-2-2000?
- (ii) To what relief the concerned employee is entitled?"

Point No. 1 :

6. The charge framed against the concerned employee in this case is that on 15-12-98 at about 4.15 P.M., the Manager of Respondent/Bank, Purasawalkam branch has conducted a meeting of Pigmy Deposit Agents in his cabin and the Assistant Manager incharge of Pigmy Deposit was also present there. While the meeting was in progress, the concerned employee, who is a clerk in the branch, questioned the Pigmy Deposit Agents why they have attended the meeting without consulting her and also without inviting her for the meeting and she rushed into the Manager's cabin and questioned the Pigmy Deposit Agents "when there is any problem you are coming and reporting to me but when there was meeting you are attending the meeting without consulting me and without inviting me" and further she asked the Pigmy Deposit

Agents to come out from the meeting and when the Manager has asked her what was her problem in conducting the Pigmy Deposit Agents' meeting, at once she replied that 'she was not talking to the Manager and she was talking only to the Pigmy Deposit Agents and the Manager need not ask any thing to her'. Thereafter, she pulled a chair and sat in the cabin of the Manager and also participated in the meeting without any invitation. Thus, she interfered in the routine function of the Manager and she attempted to stop or disturb the meeting of Pigmy Deposit Agents.

7. As against this, on behalf of the Petitioner it was not disputed that such incident had happened on 15-12-98, but the concerned employee disputed only certain facts with regard to meeting and also with regard to the findings of the Enquiry Officer. Further, the Petitioner Union has not disputed the conduct of the domestic enquiry. It is contended on behalf of the Petitioner Union that the Enquiry Officer without giving any weightage to the defence witnesses has fully endorsed and approved the version of management witnesses and thus openly exhibited his biased nature. It is the further contention of the Petitioner side that the Enquiry Officer without considering the contradictions in the management witnesses with regard to the timings of the meeting and also with regard to narration of incidents has come to a conclusion that the charge framed against the concerned employee has been proved and it clearly proves his biased nature and also the perverse finding. On behalf of the Petitioner, it is further contended that if the concerned employee was hindrance of her presence was a disturbance, the Pigmy Deposit Agents meeting would not have been held. Further, the very fact that the meeting was conducted smoothly without any disturbance in a peaceful manner and everybody disbursed peacefully after the meeting clearly proved that the concerned employee has not made any disturbance in the meetings. It is further argued that the said meeting could not be termed as an administrative exercise or a meeting of highly confidential nature. Hence, the punishment imposed by the Disciplinary Authority is highly disproportionate and harsh.

8. As against this, on behalf of the II Party/Management, it is contended that this case would not be governed by Section 11A of the Industrial Disputes Act and in such circumstances this Tribunal have jurisdiction to interfere with the findings of the Enquiry Officer only if the findings of the Enquiry Officer are perverse in the sense that they are wholly unsupported by any evidence. In this case, the concerned employee has not disputed the incident that had taken place on 15-12-1998. She has stated that the incident had taken place between 5.00 to 5.30 P.M. and not at 4.15 as alleged by the management. When the incident has not been disputed, the variation in the timings will not matter. Further, the Enquiry Officer has analysed the evidence of both sides in detail and he has come to the

conclusion that charges framed against the concerned employee has been proved. Under such circumstances, it cannot be said it is vitiated for any reason as urged by the Petitioner. Further, it is contended on behalf of the Respondent that concerned employee without any invitation, in an unauthorised manner attended the meeting, not only that she has also asked the participants to come out of the meeting. Thus, her action clearly amounts to interference of administration of the branch and it is not necessary that her presence in the meeting should have created any disturbance. It is the further contention of the Respondent that it is too much to say that this meeting with Pigmy Deposit Agents could not be termed as an administrative exercise or a meeting highly of confidential nature. It is further argued that with regard to the punishment, this Tribunal in such case would have no jurisdiction to interfere with the punishment on the ground that the punishment is disproportionate to the charges proved because, it is not a case under section 11A of the Industrial Disputes Act, 1947, but it is only a dispute under section 2(k). Further, it is only in cases of discharge or dismissal by way of punishment, that section 11A vests discretionary jurisdiction in the Tribunal to direct reinstatement with or without any terms or conditions or to vary the punishment as the circumstances of a case may warrant and it does not apply to other cases such as warning, fine, withholding of increment, demotion or suspension and therefore, it is not open to the Petitioner to invite this Tribunal to re-appreciate the evidence and take a different view from that of the Enquiry Officer. I find much force in the contention of the learned counsel for the Respondent. Therefore, I find that only because the evidences given by the management witnesses are cogent or convincing, the Enquiry Officer has come to the conclusion that the charge against the concerned employee has been proved. On this ground alone, it cannot be said that the findings of the Enquiry Officer is perverse. Further, I find there are some minor contradictions in the evidences of the management witnesses and on the same ground, it cannot be said that they will affect the whole findings of the Enquiry Officer. There is nothing to show that the findings of the Enquiry Officer are wholly unsupported by any evidence. When the concerned employee who has no authority to enter into the cabin of the Manager, when the meeting was going on, the contention of the learned counsel for the Petitioner that her participation without any invitation did not amount to any disturbance has no substance. Therefore, I find that the finding of the Enquiry Officer is not perverse.

9. The next contention of the learned counsel for the Respondent is that the issue in this case can only come under section 2(k) of the Industrial Disputes Act, therefore, the Petitioner Union is to establish that it has been duly authorised to take up the cause of the concerned employee and raise the industrial dispute. He has placed

much reliance on the ruling reported in 1973 ILLJ 341 in the case of *The Management of Madura Mills Co. Ltd. Vs. Presiding Officer, Industrial Tribunal, Madras and Others*, wherein the Madras High Court has held that '*Section 2k contemplates not only a dispute or difference connected with the employment or non-employment but also disputes and difference connected with the terms of employment or conditions of labour. Only if the dispute is connected with or arises out of discharge, dismissal, retrenchment or termination, then the dispute would be an industrial dispute notwithstanding the fact that no other workman nor any union of workmen is a party to the dispute. But if the dispute relates to any of the other matters contemplated in Section 2(k), then the parties to the dispute should have a direct or substantial interest. In other words, the persons who seek to support the cause of the concerned workman must themselves be directly or substantially interested in the dispute and such persons should be considerable or substantial in number. In the instant case, as already noticed, the dispute is not one that relates to discharge, dismissal or retrenchment or termination of service of any workman, but is one that relates to abolition of the contract system. This dispute should therefore, satisfy the requirement that it has been sponsored by a substantial number of workmen of the Petitioner company.*' The learned counsel against the dispute should, therefore, satisfy the requirement that it has been sponsored by number of workmen of the Petitioner company. The learned counsel for the Respondent has further argued that the Petitioner Union has not produced any single scrap of paper with regard to resolution passed by the Union or the Secretary has been duly authorised to take up the cause of the concerned employee in this industrial dispute. Under such circumstances, this industrial dispute raised by the union on behalf of the concerned employee is not maintainable.

10. But, on the other hand, the learned counsel for the Petitioner argued that the Respondent/Management has not taken this plea before the Regional Labour Commissioner (Central), Chennai during the conciliation proceedings and therefore, now they cannot raise this contention before the Tribunal.

11. Though I find some force in this contention, the learned counsel for the Petitioner has not produced any documentary proof in support of his contention. Since the Petitioner Union has not produced any copy of the resolution passed by the petitioner Union with regard to concerned employee's case to be raised as an industrial dispute, I find much force in the contention of the learned counsel for the Respondent. Any how in view of my holding that the finding of the Enquiry Officer is not perverse, I find this point against the Petitioner Union.

Point No. 2 :

The next point to be decided in this case is to what relief the concerned employee is entitled ?

12. In view of my findings that the finding of the Enquiry Officer is not perverse, this Tribunal cannot interfere with the findings of the Enquiry Officer. As such, I find the concerned employee in this industrial dispute Smt. Vanmathi Jayaseelan is not entitled to any relief as prayed for by the Petitioner Union. Ordered accordingly. No Costs.

13. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2003.)

K. JAYARAMAN, Presiding Officer

Witness Examined :

On either side : None

Documents Marked :**For the I Party/Workman :**

| Ex. No. | Date | Description |
|---------|------------|--|
| W1 | 07-01-99 | Reply to the charge sheet submitted by the concerned employee |
| W2 | 19-03-99 | Copy of written brief submitted on behalf of concerned employee to the Enquiry Officer |
| W3 | 07-8-99 | Copy of written submissions made by concerned employee to Disciplinary Authority |
| W4 | 11-03-2000 | Copy of appeal preferred by concerned employee Before Appellate Authority |

For the II Party/Management :

| Ex. No. | Date | Description |
|---------|------------|---|
| M1 | 05-01-99 | Xerox copy of the chargesheet issued to concerned employee |
| M2 | 07-01-99 | Xerox copy of the explanation submitted by concerned employee |
| M3 | 23-01-99 | Xerox copy of the notice of enquiry. |
| M4 | 12/13-3-99 | Xerox copy of the enquiry proceedings |

| | | |
|----------------|------------|--|
| M5 | 15-03-99 | Xerox copy of the written brief of Management representative. |
| M6 | 24-07-99 | Xerox copy of the enquiry report. |
| M7 | 07-08-99 | Xerox copy of the written submissions made by concerned employee to Disciplinary Authority. |
| M8 | 28-01-2000 | Xerox copy of the letter of Disciplinary Authority to concerned employee proposing punishment. |
| M9 | 05-02-2000 | Xerox copy of the minutes of personal hearing given to concerned employee by Disciplinary Authority. |
| M10 | 16-02-2000 | Xerox copy of the order passed by Disciplinary Authority. |
| M11 | 24-05-2000 | Xerox copy of the proceedings of Appellate Authority. |
| M12 series (4) | | Xerox copy of the exhibits marked in domestic enquiry. |

नई दिल्ली, 30 दिसम्बर, 2003

का. आ. 134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 664/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-12-03 को प्राप्त हुआ था।

[सं. एल.-12013/105/98-आई. आर. (बी.-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th December, 2003

S.O. 134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 664/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 29-12-03.

[No. L-12013/105/1998-IR (B-II)]

N. P. KESAVAN, Desk Officer.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Tuesday, the 9th December, 2003

PRESENT :

K. Jayaraman, Presiding Officer.

INDUSTRIAL DISPUTE NO. 664/2001

(Tamil Nadu Principal Labour Court CGID No. 248/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank, Chennai and their workmen through General Secretary, Indian Bank Employees Union, Chennai].

BETWEEN

The General Secretary,
Indian Bank Employees Union, Chennai
...I Party/Claimant

AND

The General Manager,
Indian Bank, Central Office, Chennai
...II Party/Management

APPEARANCES :

For the Claimant : Mr. K. J. Arunachalam,
Authorised Representative.

For the Management : M/s. Aiyar & Dolia,
R. Arumugam &
N. Krishnakumar,
Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification No. L-12013/105/98-IR(B-II) dated 19-04-1999 has earlier referred this industrial dispute to Tamil Nadu Principal Labour Court, Chennai for adjudication. The Tamil Nadu Principal Labour Court has taken the same on its file as I.D. No. 248/99 and issued notices to both the parties. Both the parties had entered appearance through their authorised representative and advocates respectively and filed their respective Claim Statement and Counter Statement. After the constitution of this Central Government Industrial Tribunal-cum-Labour Court, the said industrial dispute was transferred to this Tribunal and on receipt of the records, it was numbered as I.D. No. 664/2001.

2. The dispute referred by the Government in the Schedule is as follows :—

“Whether the management of Indian Bank is justified in proposing recovery of Rs. 100/- from the salary of Shri K. Manohar for the alleged loss caused by him to the bank ? If not, what relief the workman is entitled to ?

AND

“Whether the management of Indian Bank is justified in proposing to deduct one day's wages from the salaries of eighteen staff members (as per list attached) involved in the dispute for their alleged cessation of work on 29-10-1993 on the principle of ‘No work no pay’ and if not, to what relief the workmen are entitled to ?”

3. The allegations of the Petitioner Union in the Claim Statement are briefly as follows :—

The Petitioner Union is espoused the cause of Shri K. Manohar, who is a clerk/shroff working at Tiruppattur branch of the Respondent/Bank. The cashiers working in the cash department of the Respondent/Bank are expected to make sections having 100 pieces of currencies in the respective denominations. The currency notes of Rs. 50/- and higher denominations would be counted and signed jointly by both the cashier, who is making section and the officer, who has second counted the section. There is a subsisting understanding by and between the Federation of Indian Bank Employees Union and also the Respondent/Management in the matter of fixing responsibilities as to the number of notes in a section and as to the genuinity of the notes in that section and as per the understanding reached as such between the Federation and the Management was confirmed by exchange of letter confirming the understanding by putting in writing. As such, when a quantitative defect is noticed in a section in the denomination of Rs. 100/- and/or Rs. 50/-, and such defect is noticed at the currency chest, the officer of the branch who has signed the section is to be held responsible for such shortages. For any qualitative defects in such sections, the shroff first made the section is to be held responsible. Thus, the quality and quantity of notes of section are segregated and the responsibilities are fixed for any defects on the shroff and officer respectively and then any deficiency shall be fixed on the correct person. While so, Sri K. Manoharan, shroff was served with a letter by Tiruppattur branch of the Respondent Bank dated 27-5-1993 advising him to remit a sum of Rs. 100/- to make good the shortage of rupee notes in the section made on the ratio of 50-50 by the Officer and the Clerk. This communication to the employee is erroneous as it is against the subsisting

understanding in the matter. Then Mr. Manoharan, in his letter dated 27-10-1993 informed about respondents unilateral decision to recover the purported 50% share amount of Rs. 100/- from his salary payable for the month of November, 1993. The Tirupattur branch of the Respondent/Bank without seeking clarification from the parties concerned and without waiting for the union to give correct interpretation has unilaterally without any rhyme or reason served a letter dated 27-10-1993 that the amount would be deducted from the salary payable to the employee on 29-10-1993. On seeing this, the staff of that branch went on protest action on 29-10-1993 to ventilate their disapproval of the illegal action perpetrated by the management without any basis and against the terms of legally binding settlement. But the bank imposing wage cut on 18 staff members of that branch for one day on the basis of 'No work no pay'. Therefore, the subsisting understanding by and between the Federation of Indian Bank Employees Union and the Management of Respondent/Bank governing the working conditions of the staff working at currency chest will be binding on the Respondent/Bank and as such the action of the management is illegal and in total violation and contravention of the understanding and also imposing the wage cut on the employees by the Respondent is illegal and unsustainable. Hence, the Petitioner Union prays that an Award may be passed in their favour.

4. As against this, the Respondent in its Counter Statement contended that the terms of reference are vitiated by laches and inordinate delay and therefore, the reference is liable to be rejected. The concerned employee Sri K. Manoharan is a clerk/shroff of currency chest. The duties and responsibilities of the cashiers are well defined and laid down in Respondent/Bank's 'Manual of Instructions—cash handling and management' and therefore, it is the duty of cashiers working in cash department to do their job expected of them accordingly. The said Manual was revised from time to time and no other understanding as alleged by the Petitioner Union was implemented by the bank. The correspondence exchanged between the then Industrial Relations Manager and the Union in 1979 will not be applicable, when subsequent instructions were incorporated in the Manual in 1989 for an issue that happened during 1990. Even though the Union has given a representation and produced correspondence that no agreement had been entered into between both the parties. Hence, the allegation segregating quantity and quality and fixing responsibility respectively for officers and shroff are denied by the Respondent/Bank. It is false to allege that the decision to recover the loss was unilateral. Further the staff members of the Tirupattur branch went on illegal wild cat strike on 29-10-93 on the ground that it was unilaterally deducted

the amount from the salary of Sri K. Manoharan. But the said strike was done without any notice and justifiable cause and it was not mere protest action but illegal strike by the employees which had been resorted just to demonstrate their organisational strength paralysing the function of the Respondent/Bank. Further, no notice as required under Section 22 of the Industrial Disputes Act was served and therefore, the strike was illegal. Since there was no subsisting understanding as to the duties and responsibilities of cashier working in branches/currency chest apart from the manual of instructions. The said understanding stated by the Petitioner became inoperative and only the instructions of the bank given in 'Manual of Instructions 1989' governs the situation. Therefore, the action taken by the Respondent is legal and it cannot be questioned by the Petitioner. Further, as far as the 18 employees of the branch concerned, they went on strike illegally contravening the provisions of Industrial Disputes Act and their strike on 29-10-93 is neither justified nor legal and therefore, the staff concerned are not entitled to wages for the said date. It is further submitted that Indian Bank Employees Union has no locus standi to espouse the cause of the concerned workman Sri K. Manoharan since the staff members had already switched loyalties to unrecognised union en masse. For all these reasons, the Respondent bank prays that the claim may be dismissed with costs.

5. Again the Petitioner Union in rejoinder contended that there is no delay on the part of the union and even if there is any delay it is attributable only on the Ministry of Labour, Government of India and not on the Petitioner Union. Any understanding between the union and management and the confirmation of the said understanding by reducing it in writing will definitely have a binding nature on both the parties. Therefore any unilateral action outside the purview of the understanding will not be binding on the union and their members. It is an illegal act on the part of the Respondent/Management. The cash manual purported to have been brought out by the management was done by the management without any discussion and concurrence of the union and it is total contravention of the terms of agreement with the union and therefore, the provisions of manual will not be applicable to the parties concerned. Further, the action of the union resorting to strike is justified and legal. The Manual of Instructions does not have sanction of law. Even if the members have changed their loyalties to some other union, it is only subsequent event, it cannot alter or change the character of the dispute because certain members have changed their loyalties with the union. Under such circumstances, the Petitioner Union prays that the claim may be allowed and an Award may be passed in their favour.

6. In these circumstances, the points for my determination are :—

- (i) "Whether the management of Indian Bank is justified in proposing recovery of Rs. 100/- from the salary of Sri K. Manoharan for the alleged loss caused by him to the bank ?"
- (ii) "Whether the management of Indian Bank is justified in proposing to deduct one day's wages from the salaries of 18 staff members involved in the dispute for their alleged cessation of work on 29-10-1993 on the principle of 'No work-No pay' ", and
- (iii) "To what relief the workmen are entitled ?"

Point Nos. 1 & 2 :

7. In this case, the Petitioner namely the General Secretary of Indian Bank Employees Union was examined as WW1 and ten documents were marked as Ex. W1 to W10 on the Petitioner's side. On the side of the Respondent one Mr. Devanand, Assistant Manager (Organisation & Method Division) was examined as MW1 and 5 documents were marked as Ex. M1 to M5 on their side. The admitted facts of both sides are Sri K. Manoharan, whose cause the Petitioner Union is espousing, is working as a clerk/shroff in the currency chest of Tiruppattur branch. While, so, during the inspection of the Reserve Bank officials in the Tiruppattur branch currency chest on 13-8-1990, two notes of 100 Rupees denomination were found short in a section and Mr. Manoharan the Clerk/Shroff whose cause the Petitioner Union is espousing and Mr. R. M. Chockalingam, Officer had admittedly affixed their signatures in the denomination slip affixed on the section of Rs. 100/- bundle for having counted it and therefore, as per the instructions in the 'Manual of Instructions—Cash Handling and Management June, 1980', which is marked as Ex. M1, the responsibility was fixed on both the persons and they were directed to compensate the said amount to the bank equally.

8. It is the contention of the Petitioner Union that during the handling of such stitched currency notes, the bank has been experiencing defective/shortage of number of pieces in sections so made, hence, in order to fix the responsibility on persons who has to make good any shortage or defective currency notes, detailed discussions were held by and between the Federation of Indian Bank Employees Union and Respondent/Bank Management. The said discussions culminated in an understanding which was communicated between the parties concerned for implementation in the bank and these correspondence were marked as Ex. W1 and W2 Under Ex. W2, the Industrial Relations Manager of the II Party/Management has directed the bank's Personnel Department that the said practice should be come into immediate effect and therefore, the understanding reached under Ex. W1 was put into practice.

In that, it is mentioned that when a quantitative defect is noticed in a section in denomination of Rs. 100 and or Rs. 50 and such defect is noticed at the currency chest, the officer of the branch who could signed the section is to be held responsible for such shortage. For any qualitative defects in such sections, the shroff first made the section is to be held responsible and therefore, the terms of understanding which were implemented immediately and put into use of the bank employees and it cannot be said that the bank directed as per the manual of instructions with regard to shortage of currency. The unilateral action and recovery is illegal and therefore, the employees of the Tiruppattur branch and gone on proper action, but it cannot be said that the strike is an illegal one.

9. On behalf of the Respondent it is contended that even though the Petitioner relied on the alleged understanding reached between the Petitioner Union and the Industrial Relations Manager, a reading of Ex. W1 and W2 would clearly show that the terms were to be communicated to the Personnel Department for issuing necessary instructions and as such there were no instructions issued by Personnel Department especially in regard to item No. 8 of Ex. W1. On the other hand, Ex. M1 and M3 clearly show that Ex. W1 has not been acted upon and only the Manual of Instructions continued to be in force. Hence, the Union cannot place reliance on the so called understanding which was never implemented. It is the further contention of the Respondent that even WW1 in cross-examination has admitted that Ex. W2 read with Ex. W1 had not been given effect to and that he has not produced any document to show that it was implemented. On the other hand, he has admitted that 'Manual of Instructions—Cash Handling and Management' was issued to branch offices. Under such circumstances, it cannot be said that the alleged understanding under Ex. W1 has been given effect to and therefore, the action taken by the Respondent/Bank against the concerned employee Sri K. Manoharan is valid in law.

10. Under such circumstances, the point to be considered in this case is 'whether the understanding reached between the Union and the Management is given effect to?' or 'whether the instructions issued in Manual or Instructions with regard to Cash Handling and Management is given effect to?' as alleged by the parties.

11. On behalf of the Petitioner Union, it is argued that subsequent to the understanding reached between the Union and the Management, it was circulated to all its members working in all branches and it was also advised to the branch representatives to convene a meeting of employees to explain the guidelines given thereunder in Ex. W1 and Ex. W2. when these agreed terms of agreement were implemented, it cannot be said that only the instructions given in Manual had been given effect to by the bank. Even though the Respondent produced

documents Ex. M1 to M5 which are extract of Manual of Instructions given to the branch management which has no bearing to the terms of agreement in Ex. W1 and W2 and it was made in total contravention and violation of the agreement with the Union and therefore, they are arbitrary, unlawful and thus illegal and therefore, the action taken by the Respondent/Bank flowing out of illegal instructions cannot be sustained. It is his further contention that the unilateral instruction given by the management through Manual of Instructions were questioned by the Union and thus resulted in this dispute. Under such circumstances, it cannot be said that the action taken by the Respondent in this case is legal. Even though MW1 was examined by the II Party/Management on its side and produced documents with regard to instructions in the Manual, in the cross-examination he has expressed his ignorance of exchange of correspondence between the union and the management and he has simply deposed to all the questions 'I do not know' and therefore, the evidence of MW1 is of no use to the Respondent. Further only in order to avert illegal or unilateral recovery of amount from the salary of Sri K. Manoharan, the concerned employee in this dispute, the staff of Tiruppattur branch resorted to a token protest against the action of the Respondent/Bank branch on 29-10-1993. This token protest by the members of the branch was spontaneous and the same was imposed on them by the management due to illegal and unilateral wage recovery and therefore, the action of the staff are justified as the branch management has no right to make any unlawful and unilateral recovery from the salary of staff members and as such the action of the management against the 18 staff members is also illegal.

12. But, against this, the Respondent contended that the bank has got a department called O&M (Organisation & Methods) department to develop and issue manuals for systems and procedures adopted by the branches in various banking activities. The bank has got various manuals and one of such manual is 'cash manual' which was implemented by the bank in the year 1980 and subsequently it was amended in 1989 and 1994. At the time of introduction of the manual by the bank, the bank has also issued circulars to staff members in branches detailing the procedure envisaged in the manual and directed them to follow scrupulously. While implementing the Manual of Instructions regarding systems and procedures the bank need not seek approval or concurrence from the union and all the employees are duty bound to follow the same spelt out in manuals. Therefore, the contention of the Petitioner that the instructions given in manuals are not binding is totally incorrect and the bank has fully justified in following the cash manual which is prevailing in the bank for more than 23 years. Further, it is the contention of the Respondent that so called understanding reached was not implemented by the bank at any time. Further the Petitioner Union has not challenged the same before any Tribunal or Court for

Non-implementation of the so called understanding reached between the Industrial Relations Manager of the Respondent/Management and the Federation. On the contrary, it is also not challenged for having implemented the procedure adopted in the cash manual from the year 1980 onwards. 50 : 50 sharing of shortage between the officer and clerk is a rule and practice prevailing for more than two decades in the bank and it was not shown that the understanding above was implemented by the Respondent/Bank in any of the activities. Under such circumstances, the Respondent/Bank's action cannot be questioned by the Petitioner Union.

13. It is the further argument of the counsel for Respondent that as far as the wages for the strike on 29-3-1993 is concerned, the strike is illegal, because no notice as contemplated under section 22 of the Industrial Disputes Act was given and illegal strike cannot be justified by saying that it was forced by the management. It is the position laid down by the Supreme Court in various judgements. Further, claiming was for the strike period, the strike must be proved to be both legal and justified. In this case, strike is obviously illegal and it amounts to misconduct, which invites disciplinary action. However, the bank restricted by ordering deduction of wages on the principle who ever voluntarily refrains from doing work when it is offered to him is not entitled for payment of NPL for the work he has not done. In other words the principle of 'No work—No pay' and therefore, the action taken by the Respondent/Bank in these circumstances cannot be questioned by the Petitioner Union.

14. On considering the arguments of learned counsel for the Respondent and also the authorised representative of the Petitioner Union. I find much force in the argument of learned counsel for Respondent because it is not established before this Tribunal that the so called understanding under Ex. W1 has been implemented by the parties. Further, it cannot be said as an agreement or settlement between the Union and the Management. On the other hand, the Respondent has established that instructions in the Manual was given effect to for the past two decades and therefore, the action taken by the Respondent/Bank management cannot be said as illegal. I find, there is no substance in the claim made by the Petitioner Union that the Respondent/Management has forced the staff of Tiruppattur branch of the Respondent/Bank to go on strike and it is false to allege that it was spontaneous and it is imposed on them by illegal and unilateral wage recovery resorted to by the bank. Since the staff of Tiruppattur branch of the Respondent/Bank had gone on strike without giving any prior notice as contemplated under the provisions of law, I find the action taken by the Respondent/Management on the principle of 'No work—No pay' is illegal and justified and cannot be

questioned by the Petitioner Union. As such, I find both these points against the Petitioner Union.

15. The only point to be decided is to what relief the Petitioner Union is entitled?

In view of my above findings, I find the Petitioner Union is not entitled to any relief as claimed for, No Costs.

16. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 9th December, 2003).

K. JAYARAMAN, Presiding Officer

Witness Examined:

For the I Party/Claimant : WW1.
Sri E Arunachalam

For the II Party/Management : MW1
Sri N. Dev Anand

Documents Market:

For the I Party/Claimant:—

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 23-02-79 | Xerox copy of the letter from Petitioner Union To Industrial Relations Manager of Respondent/Bank. |
| W2 | 06-03-79 | Xerox copy of the letter from I.R. Manager of Respondent/Bank to Indian Bank Employees Union |
| W3 | 27-05-93 | Xerox copy of the letter from Senior Manager of Tiruppattur branch to concerned employee |
| W4 | 08-06-93 | Xerox copy of the letter from K. Manoharan to Respondent/Bank |
| W5 | 20-09-93 | True copy of the letter from Respondent/Bank to K. Manoharan |
| W6 | 20-09-93 | Xerox copy of the letter from K. Manoharan to Manager, Indian Bank, Tiruppattur branch. |
| W7 | 27-10-93 | Xerox copy of the letter from Branch Manager To Sri K. Manoharan regarding shortage of Rs. 100/-. |
| W8 | 28-10-93 | Xerox copy of the letter from Sri K. Manoharan to Branch Manager, Tiruppattur branch |

W9 30-10-93 True copy of letter from Respondent/Bank to K. Manoharan

W10 08-12-93 Xerox copy of the letter from Indian Bank Employees Union to Assistant Labour Commissioner (Central)

For the II Party/Management:—

| Ex. No. | Date | Description |
|---------|----------|--|
| M1 | Nil | Extract from Manual of Instructions—Cash Handling, & management, June, 1980 |
| M2 | 16-06-80 | Xerox copy of the circular issued by the Respondent/Bank to all its branches |
| M3 | Nil | Extract from the Manual of Instructions-IX |
| M4 | Nil | Xerox copy of the modification issued to Sub-para 1.4.12 of Manual |
| M5 | Nil | Extract for modification/updation of Manual of Instructions, 1994 |

नई दिल्ली, 30 दिसम्बर, 2003

का. आ. 135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 698/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-12-2003 को प्राप्त हुआ था।

[सं. एल. 12012/31/99-आई.आर. (बी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th December, 2003

S.O. 135.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 698/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial dispute between the management of Unitd Bank of India and their workmen, received by the Central Government on 29-12-2003.

[No. L-12012/31/99-IR (B-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Tuesday, the 9th December, 2003

Present : K. Jayaraman : Presiding Officer

Industrial Dispute No. 698/2001
(Tamil Nadu Principal Labour Court CGID No. 347/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of United Bank of India and their workmen)

BETWEEN

The Regional Secretary, : I Party/Claimant
United Bank of India Srakik
Karmchari Samity,
Chennai.

AND

The Regional Manager, : II Party/Management
United Bank of India,
Chennai.

Appearance :

For the Petitioner : M/s S. Ayyathurai &
K. Varatharasan, Advocates

For the Management : M/s. Row & Reddy &
S. Satish Kumar, Advocates

AWARD

The Central Government, Ministry of Labour vide Notification No. L-12012/31/99-IR(B-II) dated 07/11-06-1999 has earlier referred this industrial dispute to Tamil Nadu Principal Labour Court, Chennai for adjudication. The Tamil Nadu Principal Labour Court has taken the same on its file as I.D. 347/99 and issued notices to both the parties. Both the parties had entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively. After the constitution of this Central Govt. Industrial Tribunal-cum-Labour Court, the said industrial dispute was transferred to this Tribunal and on receipt of the records, it was numbered as I.D. No. 698/2001. The dispute referred by the Govt. in the Schedule is hereunder :

“Whether the action of the management of United Bank of India in striking of the name of Shri N.V. Nagarajan from the muster roll of the establishment w.e.f. 15-9-1993 is justified? If not, what relief the workman is entitled?”

2. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner joined the services of the Respondent/Bank as cashier on 12-9-1973 at Coimbatore. Subsequently, he has been transferred to Hyderabad during June, 1975 and again transferred to Salem at his request on 20-12-1976. He was sincere and loyal to the bank and he has all along served the bank to the best of his ability. While so, the Petitioner developed schizophrenic problem in 1990 and started taking treatment. However, it became acute in the middle of 1992. But, the disease completely failed him and he could not concentrate in his personal routine as well as official work. He sent his leave applications periodically in the beginning but he could not do so when his mental health failed totally. But, unfortunately, the Respondent/Management took the view that the Petitioner was not interested in his employment, which was not all his intention. During, February, 1995 when he became fit to discharge his duties, he reported for duty at Salem branch, but he was told to his shock and surprise that his services have been terminated by removing his name from the rolls of employees and they have also stated that before terminating his service, they had given notice in newspaper. Subsequently, the Petitioner made several representations to the higher authorities for reinstatement and the Chief Regional Manager has directed the Petitioner to submit a fitness certificate from Psychiatrist so that they could consider him for the post of typist. Accordingly, he sent a Doctor's report with fitness certificate but the bank sent a reply on 16-12-1997 stating that his representation could not be considered as there was no enabling provisions in the Bipartite Settlement. Even his representation to the Chief Manager (Discipline) has been rejected. Then he raised an industrial dispute through the union before Assistant Labour Commissioner (Central) Chennai and after the failure of conciliation, the matter was referred by the Govt. to this Tribunal. The Petitioner averred that his absence for work was neither wilful nor wanton nor intentional, but due to his mental condition. In any event, the Respondent/Bank ought to have followed the provisions of Section 25F and Section 25N of the Industrial Disputes Act, 1947 and as the Respondent/Management has not followed the mandatory provisions, the termination is void, illegal and *non est* and unjust and even the alleged service of notice to his wife cannot be valid in law. In any event, since the management knows the Bangalore address of the Petitioner, they should have sent the communication to the Bangalore address. Therefore, the Respondent/management had not followed the mandatory requirements of law and as such the retrenchment is illegal and therefore, he prays to pass an award in his favour.

3. As against this, the Respondent in their Counter Statement alleged that the Petitioner was a habitual absentee and despite repeated advise, he did not improve

his position in his attendance. The Petitioner was absented to duty for more than 1196 days upto 1992 and again absenting himself from 28-10-1992 without any communication to the bank and as his absence was affecting the smooth functioning of the bank and efficient customer service, the Regional Office had directed the branch office to take action against the concerned employee under the provisions of Bipartite Settlement and therefore, the Respondent/Bank sent a letter to the Petitioner on 5-3-1993 calling upon him to report for work within thirty days of the receipt of the letter and also to give explanation for his unauthorised absence. As per the provisions of fifth Bipartite Settlement, the aforesaid letter was sent to the Petitioner by registered post which was duly acknowledged by his wife Mrs. Urna Sundari Nagarajan. However, there was no response from the Petitioner for the said notice and finally, the Respondent has decided to give notice by way of publication in one issue of Tamil daily newspaper 'Thina Thanthi'. Accordingly, the said notice was published on 15-9-93, as a last chance informing the Petitioner to resume duty within twenty one days from the date of publication and it was also informed failing which he would be removed from the rolls of the bank. In spite of this, there was no communication from the Petitioner in response to the said notice. Consequently, the name of the Petitioner was removed and struck off from the rolls of the bank as per Bipartite Settlement. It is further submitted at no point of time, during the Petitioner's tenure of service, he had reported to the bank about his sufferings of mental illness warranting such prolonged unauthorised absence. Till the date of his termination from service, he was absented for duty 1454 days. Since the petitioner's case is not a case of retrenchment, provisions of Section 25F and Section 25N would not apply to his case and therefore, the question of payment of retrenchment compensation would not arise at all. Further, this Respondent/Bank had no knowledge of the family affairs of the Petitioner and the Petitioner has taken a stand that his wife has divorced him and the said plea is only an afterthought and the bank had no knowledge about the same. Therefore, the advertisement in the newspaper and also the notice receive by the Petitioner's wife are deemed to have been a valid service of notice. The Respondent had no knowledge about the alleged address of the Petitioner's Bangalore address. In these circumstances, holding a regular departmental enquiry would not arise and therefore, the Respondent/Bank prays that the claim may be dismissed with costs.

4. Again, the Petitioner in his reply statement has alleged that he has submitted the leave letters along with medical certificate to the Respondent and his leave applications were not rejected and therefore, his absence cannot be treated as unauthorised. Further, the Petitioner has informed the then Branch Manager namely Sri S. Ayyasamy, Kalyanasandaram and S. Mahavevan and also the co-employees about his illness and therefore, it is false

to allege that the bank had no knowledge about the mental condition of the Petitioner. The Petitioner further states that the bank was aware of the divorce obtained by his wife in 1994. Therefore, the termination of the Petitioner's service is a violation of principles of natural justice and a violation of mandatory provisions of Industrial Disputes Act, 1947. Hence, he prays that an award may be passed in his favour.

5. In these circumstances, the points for my determination are

- (i) "Whether the action of the management of United Bank of India in striking the name of Sri M.V. Nagarajan from the muster rolls of the establishment w.e.f. 11-12-1993 is justified?"
- (ii) "If not, to what relief the workman is entitled?"

Point No. 1

6. In this case, the Petitioner himself has examined as WW1 and marked 25 documents as Ex. W1 to W25 and on the side of the II Party/Management one Mr. J. Ramchander Rao, Deputy Regional Manager was examined as MW1 and 13 documents were marked as E1 to E13.

7. In this case, it is an admitted fact that M.V. Nagarajan was a member of Award staff of the Respondent/Bank and he was working in the Salem branch of the Respondent Bank till 28-10-1992 from which date he remained absent. According to the Petitioner, he had developed schizophrenia problems from 1989 and it was the peak in the middle of 1992 and that the management failed him and he could not carry out his normal routine as well as official work. He submitted leave from 1992. However, he never gave applications periodically on the beginning. But, unfortunately, the Respondent/Management took a view that the Petitioner was not interested in his employment and was negligent of his intention and they have taken drastic steps by terminating him from service.

8. But as against this, it is the contention of the Respondent/Bank that it is false to allege that the Petitioner was suffering from schizophrenia problem from 1989. He has not indicated the same in the office and no documents evidence was produced before the bank. Even from 1989, he was attending unauthorisedly for duty and his unauthorised absence amounted to 1136 days till 1992. Since his absence was unauthorised and more than 200 days, the bank has taken action against him. Therefore, it is not a termination order. The Petitioner has not been to the bank for duty from 1992. The Respondent/Bank has the decision to his employment by terminating him from service. Thus, he has lost his employment as per clause 1 of the 5th Bipartite Settlement. Therefore, the Petitioner is not entitled for any relief.

9. As against this, the learned Counsel for the Petitioner argued that denial of employment to the Petitioner/Workman amounts to retrenchment. In this case, it is admitted that Mr. Nagarajan is an Award staff. The expression rerenchment means termination of service of the workman for any reason whatsoever those expressly excluded by definition under Section 2(oo) of the Industrial Disputes Act, 1947 and therefore, it should not be understood in its narrow, natural meaning but it is to be understood in wider literal meaning. Therefore, in this case, the denial of employment to the Petitioner Mr. Nagarajan amounts to retrenchment and in the absence of compliance with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947, the termination becomes void ab initio and therefore, the petitioner is entitled to reinstatement with all benefits.

10. But, on the other hand, the learned Counsel for the Respondent has argued that in this case, the Respondent/Bank has not terminated the services as contemplated under the provisions of Industrial Disputes Act, 1947 by being absented for duty unauthorisedly, the Petitioner himself forfeited his employment as per Clause 17 of the Vth Bipartite Settlement and therefore, there is no retrenchment or not following the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 and he strongly relied on 2000(2) LLN 92 SYNDICATE BANK *Vs.* GENERAL SECRETARY, SYNDICATE BANK STAFF ASSOCIATION AND ANOTHER; 2000 (1) LLN 757 PUNJAB AND SIND BANK & ORS. *Vs.* SAKATTAR SINGH, wherein the Supreme Court has clearly laid down that "a reading of Clause XVI of 4th Bipartite Settlement will make it clear that in the event an employee absents himself from duty for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended the management may, at any time thereafter, give a notice to the employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of notice or gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from bank's service on the expiry of time fixed in the said notice. Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact situation arising in the case. This rule has been incorporated in an agreement where representatives of employees' unions were party. They also realised the futility of continuing a situation when an

employee without appropriate intimation to the management is playing truant," and argued that in this case from 28-10-92 the Petitioner was continuously remained absent till the date of paper publication for a period of 1454 days. Before taking this drastic steps, the Respondent/Bank has issued a notice under original of Ex.M10 to the Petitioner to the last known address asking him to report for duty within a period of 30 days as per Clause 17 of Bipartite Settlement. The said notice was received by his wife under the acknowledgement of Ex. M3. It is his further evidence that he was living with his wife during 1992-93 and his alleged divorce was only in the year 1995. Therefore, it cannot be said that the acknowledgement of his wife is not an acknowledgement of the Petitioner and even after this, there was no response from the Petitioner for the notice and again on sympathetic ground, the Respondent/Bank has issued a paper publication in Daily Thanthi under Ex. W5 giving a grace period of 21 days and asking the Petitioner to report for duty. But even after that the Petitioner has not turned up and therefore, from 1-12-1993 his name was removed from the rolls of the banks on the basis of voluntary cessation of work by the employee's own conduct. As pointed out by the Supreme Court, it is not the case of simple termination or any punishment for any misconduct and it cannot be said no natural justice has been given to the Petitioner. It is his further argument that there are two essential elements of natural justice, they are, no man shall be judge in his own cause; and no man shall be condemned either civilly or criminally without being afforded an opportunity of being heard in answer to the charge made against him. In this case, it cannot be said that no opportunity was given to the Petitioner because even though in the Claim Statement the Petitioner alleged that he has shifted his residence to Bangalore and it was informed to the Bank authorities about the same, he has not produced any document to show that he has informed his Bangalore address to the Respondent/Bank. Further, though he has produced copies of letters Ex.W6 to W13, he has not produced any acknowledgement for the receipt of letters in which he has alleged that he has applied for leave for the period of his absence. But, even in the copies of these alleged letters, he has not mentioned his Bangalore address and therefore, it is clear that these documents were created for the purpose of this case and therefore, the notice was sent to his last known address at Salem. Further, it was received by his wife who was living at that time with the Petitioner and as such the Petitioner cannot contend that he was not issued with any notice before this action.

11. I find much force in this argument because Clause 17(a) of Vth Bipartite Settlement clearly states that "When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned

originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to bank's right to take any action under the law or rules of service." and this is a settlement entered into between the employee Union and the Management. It cannot be said against the interest of the employees. In this case, even though the Petitioner claimed that he has sent several communications regarding his illness or to extend his leave or to rejoin his duty, he has not produced any proof of record to show that he had sent such letters to the bank and therefore, I find there is no material on record to show that he has sent several communications to the bank as alleged by him. Further as held by the Supreme Court, it is not a termination simpliciter but it is an abandonment of work by the employee. Therefore, this is not a punishment for any misconduct but only to notice the realities of the situation and it cannot be contended that principles of natural justice has not been followed in this case. Under such circumstances, it cannot be said that the bank should hold an enquiry before passing this order.

12. Again, learned Counsel for the petitioner argued that he did not receive any letters alleged to have been sent by the bank nor did he see the paper publication and he was completely in the dark due to his illness namely schizophrenic problem. Further, he divorced his wife in a Court of Law in 1995 and therefore, the alleged service of any notice on his wife cannot be valid in law and it is his further argument that he informed the Respondent/Bank about shifting of his residence to Bangalore and it was also known to the Branch Manager S/Sri Ayyasamy, J. Kalyanaraman and S. Mahadevan and co-employees and therefore, under such circumstances, the Respondent/Bank wantonly sent the notice to the last known address and alleged that the notice has been served to his wife. Therefore, the Respondent/Management did not comply with the mandatory requirements of law and therefore, the termination of the Petitioner is illegal and unjustified.

13. Though, I find some force in this argument, as I have already stated, the Petitioner has not produced any material records to prove that he has informed his Bangalore address to the Respondent/Bank and also about his illness to the bank. Therefore, I find there is no substance in the contention.

14. Again, the learned Counsel for the petitioner argued that in this case, the Petitioner produced medical certificate given by a Doctor that the Petitioner was suffering from mental derangement and it is his evidence that he has approached the higher authorities in the bank for reinstatement and the Chief Regional Manager has directed him to submit a fitness certificate from a Psychiatrist to consider him for the post of typist for which there were vacancies in the bank. The Petitioner as per the direction has obtained a certificate from the competent Doctor and produced the same and a copy of which is marked in the enquiry. Under such circumstances, the Respondent has to re-employ the Petitioner in any one of the posts available in the bank.

15. Here again, I find there is no force in this contention because since the Petitioner has abandoned his service and since the Respondent has taken all steps as per the terms of Bipartite Settlement, the Petitioner is not entitled to any relief as claimed by him. As such, I find this point against the Petitioner.

Point No. 2 :

16. The next point to be decided in this case is to what relief the Petitioner is entitled ?

In view of my above findings, the concerned employee Sri N. V. Nagarajan is not entitled for reinstatement as claimed by him. I therefore, find this point also against the Petitioner. As such, the Petitioner is not entitled to any relief.

17. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 9th December, 2003.)

K. JAYARAMAN, Presiding Officer

Witness Examined :

For the I Party/Claimant : WWI Sri Nagarajan
For the II Party/Management : MWI Sri J. Ramchander Rao

Documents Marked :

For the I Party/Workman :

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 10-05-95 | Xerox copy of the letter from Petitioner to Chairman of the Respondent/Bank |

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|---|--------------------------------------|----------|---|
| W2 | 17-03-98 | Xerox copy of the reply given by Respondent to Petitioner | W20 | 20-10-97 | Xerox copy of the letter from Petitioner to Regional Manager of Respondent/Bank |
| W3 | 22-09-98 | Xerox copy of the letter from Respondent to Assistant Labour Commissioner (Central) | W21 | 16-12-97 | Xerox copy of the reply of the Respondent |
| W4 | 05-03-93 | Xerox copy of the letter from Respondent to Petitioner regarding unauthorised absence | W22 | 27-12-97 | Xerox copy of the representation given by Petitioner to Regional Manager |
| W5 | 15-09-93 | Xerox copy of the paper publication given by Respondent | W23 | 24-02-98 | Xerox copy of the representation given by Petitioner to Chairman of Respondent/Bank |
| W6 | 28-02-91 | Xerox copy of the letter from Petitioner to Respondent requesting leave | W24 | 23-12-98 | Xerox copy of the proceedings of Assistant Labour Commissioner (Central) |
| W7 | 18-09-92 | Xerox copy of the leave letter from Petitioner to Respondent/Bank | W25 | 07-10-96 | Xerox copy of the letter from Petitioner to Regional Manager of Respondent/Bank |
| W8 | 06-10-92 | Xerox copy of the leave letter from Petitioner to Respondent/Bank | For the II Party/Management : | | |
| W9 | 30-10-92 | Xerox copy of the leave letter from Petitioner to Respondent/Bank | Ex. No. | Date | Description |
| W10 | 25-02-93 | Xerox copy of the leave letter from Petitioner to Respondent/Bank | M1 | Nil | Xerox copy of the leave particulars of Petitioner |
| W11 | 17-3-93 | Xerox copy of the leave letter from Petitioner to Respondent/Bank | M2 | 21-01-93 | Xerox copy of the letter from Salem branch to Regional Manager of Respondent/Bank |
| W12 | Nil | Xerox copy of the leave letter from Petitioner to Respondent/Bank | M3 | Nil | Xerox copy of the postal acknowledgement |
| W13 | Nil | Xerox copy of the leave letter from Petitioner to Respondent/Bank | M4 | Nil | Xerox copy of the certificate of posting |
| W14 | 02-04-93 | Xerox copy of the leave letter from Petitioner to Respondent/Bank | M5 | 01-06-93 | Xerox copy of the internal correspondence |
| W15 | 14-06-95 | Xerox copy of the letter from Petitioner to Chairman of Respondent/Bank | M6 | 29-11-93 | Xerox copy of the internal correspondence |
| W16 | 10-10-96 | Xerox copy of the letter from Petitioner to Chairman of Respondent/Bank | M7 | 02-12-93 | Xerox copy of the letter from Chennai branch to Salem branch of Respondent/Bank |
| W17 | 09-12-96 | Xerox copy of the letter from Petitioner to Respondent/Bank at Calcutta | M8 | 03-12-93 | Xerox copy of the letter from Salem branch to Chennai branch of Respondent/Bank |
| W18 | 08-01-97 | Xerox copy of the letter from Petitioner to Manager of Respondent/Bank at Calcutta | M9 | 22-12-95 | Xerox copy of the letter from Salem branch to Chennai branch of Respondent/Bank |
| W19 | 18-06-97 | Xerox copy of the letter from Petitioner to Chairman of Respondent/Bank | M10 | 15-06-98 | Xerox copy of the letter from Respondent/Bank to Regional Labour Commissioner (Central) |

| Ex. No. | Date | Description |
|---------|----------|---|
| M11 | 22-09-98 | Xerox copy of the letter from Chief Regional Manager to Assistant Labour Commissioner (Central) |
| M12 | 06-10-98 | Xerox copy of the letter from Respondent/Bank Union to Respondent/Bank |
| M13 | Nil | Xerox copy of the paper advertisement. |

नई दिल्ली, 30 दिसम्बर, 2003

का. आ. 136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 36/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-12-2003 को प्राप्त हुआ था।

[सं. एल. 12011/222/2001-आई.आर.(बी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 30th December, 2003

S.O. 136.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 29-12-2003.

[No. L-12011/222/2001-IR (B-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 12th November, 2003

Present : K. Jayaraman : Presiding Officer

Industrial Dispute No. 36/2002

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Syndicate Bank and their workmen)

BETWEEN

The President, : I Party/Claimant
Syndicate Bank Employees
Union, Chennai.

AND

The Deputy General Manager, : II Party/Management
Syndicate Bank, Z.O.
Chennai.

APPEARANCE:

For the Claimant : M/s. P. Manimeghalai & R.
Gomathi, Advocates

For the Management : M/s. T.S. Gopalan & Co.,
Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-12011/222/2001-IR(B-II) dated 20-03-2002 has referred the following dispute to this Tribunal for adjudication :

“Whether the imposition of punishment of reduction in basic pay by two stages for two years to Shri R. V. Raman, Special Assistant, Syndicate Bank, Vellore branch by the management of Syndicate Bank is legal and justified ? If not, what relief the workman is entitled to ?”

2. After the receipt of the reference, it was taken on file as I.D. No. 36/2002 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their respective Claim Statement and Counter Statement.

3. The allegations of the Petitioner Union in the Claim Statement are briefly as follows :

The Petitioner Union has raised this dispute espousing the cause of the one Sri R. V. Raman who is working as Special Assistant in Vellore branch of the Respondent/Bank. While so, on 12-2-2000, a charge sheet was issued to the concerned employee charging him with misconduct of his behaviour on 23-12-1999 and 29-12-1999. The concerned employee has given a reply denying the charges but not accepting his explanation, a domestic enquiry was ordered by the Respondent/Bank. After enquiry, on 25-10-2000, the Enquiry Officer has given his report holding that both the charges framed against the concerned employee were duly proved. On 30-11-2000, the Disciplinary Authority concurring with the findings of the Enquiry Officer proposed the punishment of reduction in basic pay by two stages for two years for the misconduct of 23-12-99 and a punishment of warning for the misconduct of 29-12-99 and after a personal hearing on 13-12-2000, the concerned employee was awarded with the above punishments. Even the appeal preferred by the concerned employee was rejected and the punishment was confirmed. The Petitioner alleged that the findings of the Enquiry

Officer for the said charges is one sided, biased, perverse and is an outcome of total non-consideration of the real issue in a proper perspective. They have not taken into account the evidences of the defence witnesses and in a pre-determined mind accepted the evidence of the management and given the punishment. The punishment imposed on the concerned employee is highly disproportionate to the charges framed against him. Therefore, the Petitioner prays to set aside the order passed against the concerned employee and for consequential relief.

4. The Respondent in their Counter Statement has alleged that the issue in this case can only form a subject matter of an industrial dispute under Section 2K of the Industrial Disputes Act, 1947. Therefore, the Petitioner Union has to establish that it has been duly authorised to take up the cause of the concerned workman Sri R.V. Raman and to raise an industrial dispute. The enquiry in this case has been conducted in a fair and just manner and the findings of the Enquiry Officer are supported by evidence and it cannot be characterised as perverse. The issue referred for adjudication would not attract Section 11A of the Act and therefore, it is not permissible for the Petitioner to invite the Tribunal to re-appreciate the evidence and to arrive at a conclusion different from that of the Enquiry Officer. Further the propriety of the punishment cannot be gone into in the present case. Hence, the Respondent prays that the Petitioner's claim may be dismissed.

5. In these circumstances, the points for my consideration are :

- (i) "Whether the Petitioner Union is duly authorised to take up the cause of concerned workman Sri R. V. Raman to raise this industrial dispute;
- (ii) Whether the imposition of punishment of reduction in basic pay by two stages for two years on Sri R. V. Raman, Special Assistant, Syndicate Bank, Vellore branch by the management of Syndicate Bank is legal and justified ?
- (iii) To what relief, the concerned workman is entitled ?"

Point No. 1 :

6. In this case, the Petitioner has produced documents Ex. W1 to W4 and the II Party/Management has produced 8 documents Ex. M1 to M8 and both sides have not let in any oral evidence. On behalf of the Respondent it was contended that the punishment of reduction of basic pay by two stages for two years imposed on the concerned employee Sri R. V. Raman can only form a subject matter of an Industrial Dispute under Section 2K of the Industrial Disputes Act, 1947 and therefore, the Petitioner Union is

to establish that it has been duly authorised to take up the cause of the concerned workman to raise an industrial dispute. Further, on the side of the Respondent reliance was placed on the judgement reported in 1973 ILLJ 341 in the case of THE MANAGEMENT OF MADURA MILLS CO. LTD. Vs. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, MADRAS AND OTHERS. In that case, the Madras High Court has held that "Section 2K contemplates not only a dispute or difference connected with the employment or non-employment but also disputes and difference connected with the terms of employment or conditions of labour. Only if the dispute is connected with or arises out of discharge, dismissal, retrenchment or termination, then the dispute would be an industrial dispute notwithstanding the fact that no other workman nor any union of workmen is a party to the dispute. But if the dispute relates to any of the other matters contemplated in Section 2K then the parties to the dispute should have a direct or substantial interest. In other words, the persons who seek to support the cause of the concerned workman must themselves be directly or substantially interested in the dispute and such persons should be considerable or substantial in number. In the instant case, as already noticed, the dispute is not one that relates to discharge, dismissal or retrenchment or termination of service of any workman, but is one that relates to abolition of the contract system. This dispute should therefore, satisfy the requirement that it has been sponsored by a substantial number of workmen of the Petitioner company." Relying on this decision of the High Court, the learned counsel for the Respondent argued that in this case even in the Counter Statement the Respondent has raised this issue that the members of the union have not sponsored the President/ General Secretary of the Union to represent or to espouse the cause of the concerned employee Sri R. V. Raman and therefore, it is the first duty of the Petitioner Union to establish before this Tribunal that substantial number of persons have sponsored or passed a resolution to that effect. Therefore, this dispute cannot be considered at this stage.

7. But, on the other hand, the learned counsel for the Petitioner argued that while the Petitioner has raised the dispute before the Regional Labour Commissioner (Central), the Respondent has not raised this issue and therefore, now it cannot be contended that the Union has no authorisation to represent the concerned workman. But, here again, the Petitioner Union has not produced any documentary proof before this Court to show that the Respondent has not raised any plea before the Regional Labour Commissioner (Central) and further even assuming for the argument sake, they have not raised this plea in the counter filed before the Regional Labour Commissioner (Central), it cannot be said that the Court can presume that members of the Union have passed a resolution to represent the concerned employee before this Tribunal. As such, I find this point in favour of the Respondent.

Point No. 2 :

8. The next point to be decided in this case is whether the imposition of punishment by the Respondent/Bank on the concerned workman is legal and justified ?

In this case, the concerned employee was charged with two charges. The first charge is on 23-12-99, the concerned staff Sri R. V. Raman was assigned the work of writing the officers'/Manager's scroll and making entries in the said scroll covering cash receipts and payments. On that day, one Dr. B. V. Venkatesan, an account holder of the branch came to the branch and gave a cheque for Rs. 4,250 and collected a token and was waiting to receive the cash payment. When the said customer was moving towards cash counter at about 12.45 pm the concerned staff informed the customer that there was no cash in the bank and the branch staff had gone out to borrow cash neighbouring bank. Immediately, the customer went inside the Senior Branch Manager's cabin and made a complaint immediately the Senior Branch Manager came out of his cabin and collected cash of Rs. 4,250 from the Cashier and handed over the same to the said customer and when the Senior Branch Manager called the concerned staff and asked 'is it wrong' and even the advise of the Senior Branch Manager has not been accepted by the concerned employee and there was no warrant for the concerned employee to inform the account holder that there was no cash and it was none of his business and his work on that day nothing to do with to tell such a false information to the customer, hence, this charge. The second charge is on 29-12-99 the concerned employee not only precipitated an illegal strike but participated in it causing serious damage to the bank and therefore, punishment of reduction of basic pay by two stages for two years to the concerned employee was imposed, for the incident that had taken place on 23-12-99. For the incident took place on 29-12-99, a punishment of warning was imposed on the concerned employee.

9. The counsel for the Petitioner has contended that the enquiry report submitted by the Enquiry Officer is one sided, biased, perverse and is an outcome of total non-consideration of the real issue in a proper prespective. It is their further argument that the first witness examined by the management Mr. Venkatesan clearly deposed that he has been a customer of the Respondent/Bank from 1966 onwards and therefore, he must have sufficient knowledge of the working system of the branch. He has also clearly admitted that after the token number is called out by the Cashier, the cash will be paid to him. Therefore, at this stage, there was absolutely no necessity for Mr. Venkatesan to approach the concerned employee to enquire as to which counter he should seek for payment. If Ex. M1 (marked before the Enquiry Officer) is perused, token number issued to the witness is very much available and on the reverse of the cheque his signature also appears and the denomination

written by the Cashier were also seen. If this document is properly examined by the Enquiry Officer, it is very much evident that the beneficiary is none other than Dr. Venkatesan namely the first witness and that there is no record to show that the Senior Branch Manager has received the cash on behalf of the customer Venkatesan. But, without appreciating the evidence of MW1 the Enquiry Officer has come to a conclusion in a pre-determined mind and therefore, the finding is perverse, one sided and biased.

10. But, on the other side, it was argued on behalf of the Respondent that the reference is with regard to punishment of reduction in basic pay by two stages for two years and this punishment was awarded only with regard to the incident took place on 23-12-99 and therefore, it is not necessary to deal with the incident that had taken place on 29-12-99. Further, the issue referred in this case for adjudication would not attract Section 11A of the Industrial Disputes Act and therefore, it is not permissible for the Petitioner to invite the Tribunal to re-appreciate the evidence and to arrive at a conclusion different from that the Enquiry Officer. So long as the findings of the Enquiry Officer are supported by evidence, the said evidence cannot be set aside on the ground that on the same evidence for some other conclusion, if possible.

11. In this case, the contention raised by the Petitioner side that the findings of the Enquiry Officer is perverse or biased is not proved. It is clearly established by the Respondent/Management side that the incident had taken place on 23-12-99 and the Senior Branch Manager has given the amount to the customer after getting it from the Cashier and therefore, the Petitioner cannot take advantage of certain discrepancies and argued that the findings of the Enquiry Officer is biased or perverse. Nothing was shown by the Petitioner that the enquiry report is perverse, one sided and an outcome of total non-consideration of the real issue in a proper perspective. Under such circumstances, it cannot be said that this Tribunal can hold that the order passed by the Respondent/Management is not legal and justified. Further, it is argued on behalf of the Respondent that the propriety of the punishment cannot be gone into in the present dispute and therefore, the Petitioner cannot argue that the punishment is disproportionate to the charge framed against the Petitioner. under such circumstances, it cannot be contended that the action taken by the Respondent/Management is illegal.

12. On considering the arguments of the learned counsel and on a perusal of documents, I find much force in the contention of the learned counsel for the Respondent. Further, in view of my above finding that the Petitioner has not substantiated their claim that the Union has been duly authorised to represent the concerned employee, I find this point against the Petitioner Union.

Point No. 3 :

13. In view of my above findings, I find the concerned employee in this industrial dispute Sri R. V. Raman is not entitled to any relief. Ordered accordingly. No Costs.

14. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th November, 2003.)

K. JAYARAMAN, Presiding Officer

Witness Examined :

On either side : None

Documents Marked :**For the I Party/Claimant :**

| Ex. No. | Date | Description |
|---------|------------|---|
| W1 | 13-01-2000 | Xerox copy of the reply to show cause notice filed by concerned employee. |
| W2 | 16-03-2000 | Xerox copy of the reply to charge sheet filed by concerned employee. |
| W3 | Nil | Xerox copy of the written submissions filed by concerned employee before Enquiry Officer. |
| W4 | 22-10-01 | Xerox copy of the appeal preferred by concerned employee. |

For the II Party/Management :

| Ex. No. | Date | Description |
|----------------|--------------------------|--|
| M1 | 12-02-2000 | Xerox copy of the charge sheet issued to concerned employee. |
| M2 | 16-03-2000 | Xerox copy of the explanation submitted by concerned employee. |
| M3 Series (14) | 14-09-2000 To 23-09-2000 | Xerox copy of the proceedings of domestic enquiry (14 documents) |
| M4 | 27-10-2000 | Xerox copy of the letter from respondent to concerned employee enclosing report of Enquiry Officer |
| M5 | 30-11-2000 | Xerox copy of the letter from zonal office to concerned employee. |
| M6 | 08-12-2000 | Xerox copy of the minutes of personal hearing. |
| M7 | 13-12-2000 | Xerox copy of the letter to concerned employee enclosing proceedings of Disciplinary Authority. |

M8 24-02-2001 Xerox copy of the letter of Respondent enclosing proceedings of appeal.

नई दिल्ली, 31 दिसम्बर, 2003

का. आ. 137.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 2114 दिनांक 3-7-2003 द्वारा करेंसी नोट प्रेस, नासिक रोड जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 25 में शामिल हैं, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 15-7-2003 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और्ध्व कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 15-1-2004 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. संख्या एस. 11017/3/91-आई.आर. (पी.एल.)]
जे. पी. पति, संयुक्त सचिव

New Delhi, the 31st December, 2003

S.O. 137.—Whereas the Central Government having been satisfied that the public interest so required that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 2114 dated 3-7-2003 the services in the Currency Note Press, Nasik Road which is covered by item 25 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a public utility service for the purpose of the said Act, for a period of six months from the 15th July, 2003.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 15th January, 2004.

[No. S-11017/3/91-IR(PL)]

J.P. PATI, Jt. Secy.